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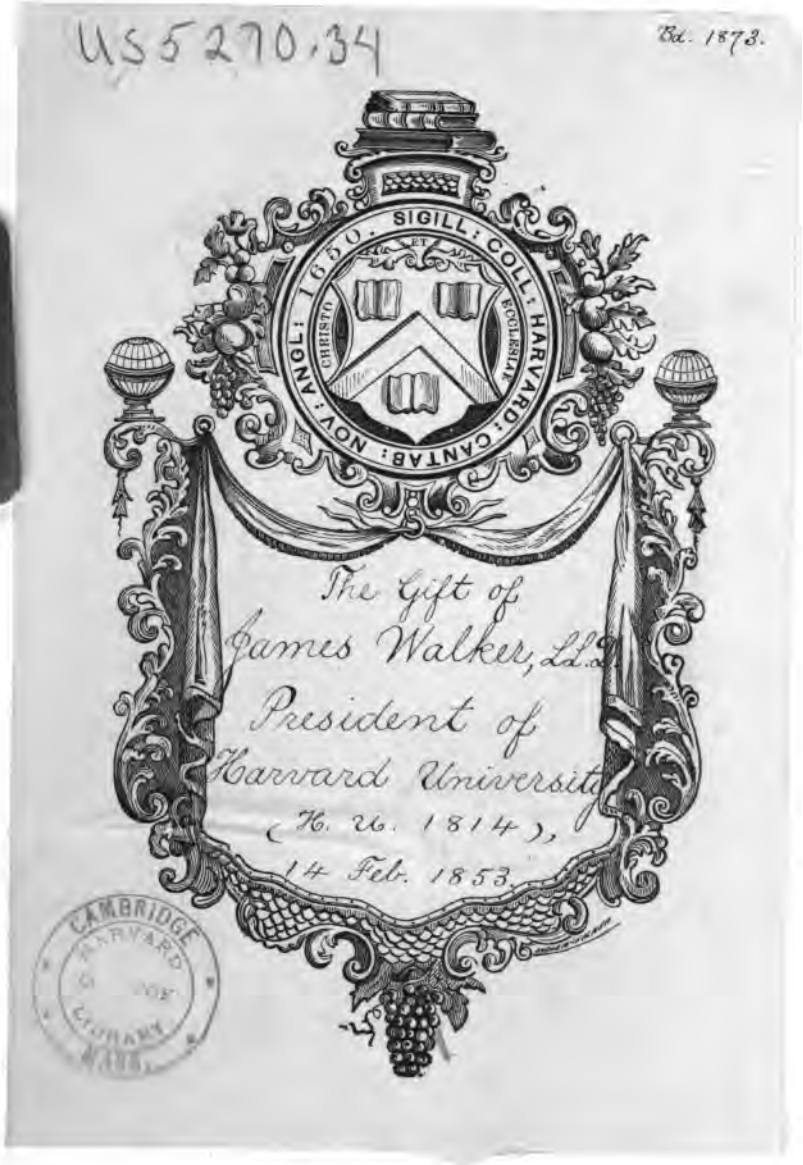
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TRIAL

OF

THOMAS SIMS,

ON

AN ISSUE OF PERSONAL LIBERTY,

ON

THE CLAIM OF JAMES POTTER, OF GEORGIA,

AGAINST HIM, AS AN ALLEGED FUGITIVE FROM SERVICE.

ARGUMENTS

OF

ROBERT RANTOUL, JR.

AND

CHARLES G. LORING,

WITH

THE DECISION OF GEORGE T. CURTIS.

BOSTON, APRIL 7—11, 1851.

PHONOGRAPHIC REPORT BY DR. JAMES W. STONE.

BOSTON:

WM. S. DAMRELL & CO., COMMONWEALTH BUILDING, NO. 60 WASHINGTON ST.

1851.

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1853 Feb 14
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GEORGE T. CURTIS, *Commissioner.*

SETH J. THOMAS, *For the Claimant.*

ROBERT RANTOUL, JR.,
CHARLES G. LORING,
SAMUEL E. SEWALL,
} *For the Respondent.*

NOTE.—The Decision of the Commissioner was not reported by Dr. STONE, but was furnished by Mr. CURTIS.

OPENING ARGUMENT

OF

HON. ROBERT RANTOUL, JR.

BOSTON, APRIL 7, 1851.

I propose to submit to your Honor's consideration, the several propositions which I presented when the Court was last in session. And perhaps it is most convenient to take them in the order in which they stand, and in that order I shall read them to the Court.

The points are as follows:—

1. That the power which the Commissioner is called upon in this procedure to exercise, is a judicial power, and one that if otherwise lawful can be exercised only by a Judge of the U. S. Court duly appointed, and that the Commissioner is not such a Judge.

2. That the procedure is a suit between the claimant and the captive, involving an alleged right of property on one hand, and the right of personal liberty on the other, and that either party therefore is entitled to a trial by jury; and that the law which purports to authorize the delivery of the captive to the claimant, denying him the privilege of such trial, and which he here claims under judicial process, is unconstitutional and void.

3. That the transcript of testimony taken before the magistrates of a State Court in Georgia, and of the judgment thereupon by such magistrates, is incompetent evidence, Congress having no power to confer upon State Courts or magistrates, judicial authority to determine conclusively, or otherwise, upon the effect of evidence to be used in a suit pending, or to be tried in another State, or before another tribunal.

4. That such evidence is also incompetent; the captive was not represented at the taking thereof, and had no opportunity for cross-examination.

5. That the Statute under which the process is instituted is unconstitutional and void, as not within the powers granted to Congress by the Constitution, and because it is opposed to the express provisions thereof.

The first proposition is that the power which the Commissioner is called upon in this procedure to exercise is a judicial power, and one that if otherwise lawful, can be exercised only by a Judge of the United States Court, duly appointed; and that the Commissioner is not such a Judge.

I suppose the great question which arises here, is whether the power which he is called upon to exercise is a judicial power. That the Commissioner cannot be a judge is evident from the character given to judges, the tenure and terms of their office as given in the first section of the third Article of the Constitution of the United States. The expressions there used are—

ART. III., SEC. 1. "The Judicial power of the United States shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges both of the Supreme and inferior Courts shall hold their offices during good behavior and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office."

Now I suppose it cannot be contended, here or any where else, that the Commissioner of the United States Court comes within this description of a Judge. He is not appointed to hold his office during good behavior, that is for life unless impeached, neither does he receive a stated compensation for his services. Those two conditions are essential to the character of a judge. A Commissioner of the Circuit Court, possessing neither of those qualifications, it is unnecessary for me to argue further, as I might do—is not, and cannot be, considered as a judge, within the meaning of the Constitution. The Courts are spoken of as Courts in the sentence which invests them with power. Then the individuals of which the Court is composed are spoken of as Judges. There can be no superior or inferior Courts except those composed of judges, and such judges too as hold office for life, and with stated salaries, which cannot be diminished during their continuance in office.

Now, the judicial power of the United States having been invested in such courts consisting of such judges, is that grant of power to those courts in its nature exclusive? Most certainly it is, according to this Constitution.—This Constitution gives to the government of the United States, and to each branch of that government, legislative, executive, and judicial, only the precise powers defined in this instrument. They can take no power which is not there given to them. They take nothing by implication. And as they can *take* no power by implication, they can *extend* nothing by implication. The power which is here given to the Supreme Court, and to the inferior courts, is *the whole* judicial power. And that is plain. The whole judicial power is given to these Courts, and to them only. Congress has no right to give any scintilla of judicial power to any other person, under any pretence, except to the Supreme Court, and to such inferior courts as the Congress may from time to time ordain and establish. Then I say Congress has not from time to time established any such court as a Commissioner, because the qualifications of a commissioner do not come up to the qualifications of a judge. If he be not a judge, then the judicial power cannot be invested in him.

The question then comes essentially to this, What is judicial power? And is the power which the claimant invokes and which he calls upon your Honor to exercise a judicial power? If not, then your Honor can grant the desired certficate. If it be, then your Honor is bound

to refuse to act, because there can be no action under an unconstitutional act, in this case, any more than in any other, before any other tribunal. The Commissioner is bound to hear the argument of the constitutionality of the law. It is the *first* duty of a commissioner sitting under this act, to ascertain not merely by such feeble aid as he can receive from the counsel, but by his own research and superior judgment, to determine whether this be a constitutional act.—If it be an unconstitutional act then he violates his duty when he acts under it.

THE COMMISSIONER. There can be no doubt, Mr. Rantoul, about that.

MR. RANTOUL. I should not have alluded to it were it not for the position taken on the other side, that the constitutional question could not be raised here. Is the power exercised by the commissioner a judicial power? The definition is in the second section of the third article.

Art. III, Sec. 2.—The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and the treaties made, or which shall be made, under their authority."

Then follow certain other grants of power.

"To all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States—between a State and citizens of another State—between citizens of different States," and so on. It extends "to all cases in law and equity, arising under this Constitution, the laws of the United States," &c.

Now does this act of the 18th of Sept. 1850, provide for proceedings which in themselves constitute a case, within the meaning of this section of the third article of the Constitution? Is it *a case* in law or equity, which arises under the Constitution, or under the laws of the United States?

In order to determine that question, let us consider what is a case. A suit is a case.—Any proceeding where a party invokes the aid of any tribunal to render to him any right which he demands and which is denied or withheld from him,—a demand of right by a party constitutes a case. Your Honor has supposed that twenty-four hours would be ample time to prepare the argument for this hearing. But I have not had time to take down from my shelves all those cases which are familiar to my memory, far less to look up new cases. I have not had time to read through the cases to which I shall refer. Therefore if there is not a sufficient accuracy, condensation, and logical arrangement in the mode in which I must bring to bear the different parts of this case, want of time must be my excuse. I shall be obliged to make general remarks, where I should prefer to read precedents, and authorities. Instead of reading these authorities, which I will look up and bring in, and read to you if the court will give me time, which I think it should in a great case involving the liberty of a human being, and of his posterity after him forever, and those principles which guarantee the liberty of twenty millions of white inhabitants of the United States, I will merely state the argument that, in the limited time allowed me, I have been able to prepare.

In a case where a party is claimed as a fugitive from labor or service, there is a distinct subject matter for adjudication, there are distinct parties, and it is before a tribunal. Now a case, if it be not a case in equity, or in admiralty, is a case at law. It is not necessary that it should be a case at "common law," or a case under a particular statute. Any case where a party claims a right, and another party denies that right, is a case under some one of those clauses to which I have referred.

In the case of Prigg vs. the Commonwealth of Pennsylvania, 16 Peters, page 615, the Court says, "But he (the slave) shall be delivered up on *claim* of the party to whom such service or labor may be due. A 'claim' is to be made.—What is *a claim?* It is in a just juridical sense a demand of some matter as of right made by one person upon another to do, or to forbear to do, some act or thing as a matter of duty. A more limited but at the same time an equally expressive definition was given by Lord Dyer, as cited in Stowell v. Zouch, Plowden 359; and it is equally applicable to the present case; that 'a claim is a challenge by a man of *the propriety or ownership of a thing which he has not in possession but which is wrongfully detained from him.*' The slave is to be delivered up on the claim. By whom to be delivered up? In what mode to be delivered up? How, if a refusal takes place, is the right to delivery to be enforced? Upon what proof? What shall be the evidence of a rightful recaption, or delivery?—When, and under what circumstances, shall the possession of the owner after it is obtained be conclusive of his right, so as to preclude any further inquiry, or examination, into it, by local tribunals, or otherwise, while the slave, in possession of the owner, is *in transitu* to the State from which he fled? These and many other questions will readily occur upon the slightest attention to the clause; and it is obvious that they can receive but one satisfactory answer."

I will refer to the 6th Wheaton, page 379, Cohens v. Virginia. I will not read all which may bear upon this question. "If it [the intention] be to maintain that a case arising under the Constitution or a law must be one in which a party comes into Court to demand something conferred on him by the Constitution or a law, we think the construction too narrow. A CASE in law or equity consists of the right of the one party as well as of the other, and may truly be said *to arise* under the Constitution or a law of the United States, whenever its correct decision depends on the construction of either. Congress seems to have intended to give its own construction to this part of the Constitution, in the 25th section of the Judiciary Act; and we see no reason to depart from that construction."

Then I read as to whether this be a case arising under the Constitution from the same case of Prigg, in the 16th Peters, page 616. "It is plain then that where *a claim* is made by the owner *out of possession* for the delivery of a slave, it must be made, if at all, against some other person; and inasmuch as the right is a right of property, capable of being recognized, and asserted by proceedings before a court of justice, between parties adverse to each other, it constitutes *in the strictest sense* a controversy be-

tween the parties, and *a case* 'arising under the Constitution' of the United States; within the EXPRESS delegation of JUDICIAL POWER given by that instrument."

This very "claim made by an owner out of possession for the delivery of the slave," constitutes "a case arising under the Constitution of the United States, within the express delegation of JUDICIAL POWER given by that instrument."

THE COMMISSIONER. Will you read the rest of that paragraph?

MR. RANTOUL. "Congress then may call THAT POWER into activity for the very purpose of giving effect to that right; and IF so, then it may prescribe the mode and extent in which IT shall be applied; and how, and under what circumstances, THE PROCEEDINGS shall afford a complete protection and guarantee to the right." It will be perceived that these words contemplate a calling into activity, by Congress, OF THE JUDICIAL POWER; and "proceedings" under that power; and have no allusion to any other power whatever.

Most certainly if the clause in the Constitution touching fugitives from service be a grant of power to Congress, which I will consider by and by, then Congress may prescribe the mode and extent in which it shall take place, with this limitation that Congress cannot confer upon the Executive, legislative power, or judicial power; neither can it confer upon the Judiciary, executive power, or legislative power, nor can it usurp for itself either the judicial or executive power. Congress is bound to keep the three branches of power distinct, and to confine each within its proper bounds. When the Court says "Congress may call *that power* into activity for the very purpose of giving effect to that right," it is JUDICIAL POWER that is to be called into activity. Congress can confer it only upon judicial authorities—upon judges. Congress can no more say that a person, holding an office *analogous* to that of a judge, shall perform judicial duties, than it can authorize a person to perform judicial duties whose office is not at all analogous to that of a judge. No more can Congress enable a Commissioner to perform judicial duties than it can make the United States Marshal, or his deputy, perform judicial duties. The Commissioner is not a judge. The Constitution having determined what a judge shall be, it is not in the power of Congress to transmute any one else, while holding another office, into a judge, whatever may be the similarity or analogy in the duties and functions performed by that other person, in that other office, so long as he does not possess the fixed and unalterable Constitutional characteristics of a Judge.

If it be not so, of what use is this so much vaunted parchment? If it be not so, is not our Constitution, as Mr. Clay once feared it might become, "as diffused and intangible as the pretended unwritten Constitution of Great Britain?" One fundamental principle which is laid down as of paramount importance by all authorities is that the three distinct branches of Governmental power shall be well defined, the legislative, the executive, and the judicial; and the Constitution having undertaken to carry out that distinction, Congress cannot do anything to destroy it.

There are two qualities for Judges which seem to be essential; one that they shall have a stated salary; and the other that they shall enjoy the tenure for life, unless impeached. Neither of these qualities belongs to the United States Commissioner. The judicial power extends to cases in law and equity. The case of Parsons against Bedford, 3 Peters, page 446, contains a further definition of what cases in law are. I shall have occasion to refer to this in another branch of my argument, but it is so directly to this point, that I will read a portion of it here. The Court is speaking of suits at common law where there is a right of trial by jury.

"It is well known that in civil causes in courts of equity and admiralty, juries do not intervene, and that courts of equity use the trial by jury only in extraordinary cases, to inform the conscience of the court. When therefore we find that the amendment requires that the right of trial by jury shall be preserved in suits at common law, the natural conclusion is that this distinction was present to the minds of the framers of the amendment. By *common law* they meant what the Constitution denominated in the third article 'law.'" Now the third article is what I have been alluding to; and in that they meant "not merely suits which the *common* law recognized among its old and settled proceedings, but suits in which *legal* rights were to be ascertained, and determined in contradistinction to those where equitable rights alone were recognized and equitable remedies were administered; or where, as in the admiralty, a mixture of public law and of maritime law and equity was often found in the same suit. Probably there were few if any States in the Union in which some new legal remedies differing from the old common law forms were not in use; but in which however the trial by jury intervened, and the general regulations in other respects were according to the course of the common law. Proceedings in cases of partition, and foreign and domestic attachment, might be cited as examples, variously adopted and modified. In a just sense then the amendment may be construed to embrace ALL SUITS, *which are not of equity and admiralty jurisdiction*, whatever may be the peculiar form which they may assume to settle legal rights."

"And Congress seems to have acted with reference to this exposition in the judiciary act of 1789, ch. 20, which was contemporaneous with the proposal of this amendment" [the seventh amendment which secures jury trial in suits at common law:] "for in the ninth section it is provided that 'the trials of issues in fact in the District Courts, in *all causes*, except civil causes of admiralty and maritime jurisdiction, shall be by jury;' and in the twelfth section it is provided, that 'the trial of issues in fact in the Circuit Courts shall, *in all suits* except those of equity and of admiralty and maritime jurisdiction, be by jury;' and again, in the thirteenth section, it is provided, that 'the trial of issues in fact in the Supreme Court in all actions at law against citizens of the United States, shall be by jury."

A question of fact like the present, to be decided by a competent tribunal, is when brought before such a tribunal, a case in law arising un

der the Constitution, and it is a suit at common law within the meaning of the seventh amendment of the Constitution. The *form* which the question may assume is totally immaterial in considering the right of the parties to be tried by JUDGES, and by a JURY, whether the issue be one of liberty, or of property. If by changing the form of proceeding Congress may annihilate this right in one class of cases, it may do so in all cases; and the Constitutional guarantee is not worth the parchment it is written on. It is not the form, but the nature of the inquiry which constitutes it a case, and a suit at common law. Such is the obvious intent of the Constitution: so it was understood by Congress in 1789 contemporaneously with the adoption of the seventh amendment; so the Supreme Court of the United States, acting under their high responsibility, have interpreted the Constitution. Now, there springs up suddenly, I know not whence, the appalling doctrine, that by adopting a particular mode of procedure, the depriving a man of his liberty, and handing him over to the claimant, by a final and conclusive decision, without appeal, is not an exercise of judicial power! What strange doctrine comes next I know not.

THE COMMISSIONER. Nothing else will be likely to come from any person who sits here, I imagine.

MR. RANTOUL. I referred to other doctrines that must come from acknowledging this construction of the Constitution. Is it a case at law? "Yes," said the Supreme Court, "unless it be a case in admiralty, or Equity;" and it is neither. It is a case where a party makes a claim, and another party opposes that claim. It is such a proceeding. This law itself, in the sixth section calls it *"a case,"* and directs the Commissioner to "hear and determine" it. Is it a case at law, or is it a case in equity, or admiralty? It is not a case in equity or admiralty. No body will pretend that. Then it is a case at law. Then the Supreme Court were right when they said this was clearly a case at law. This very case includes a part of the power granted as the judicial power of the United States to be exercised by the judges of the U.S. and is A CASE AT LAW, and nothing else.

Over this very case at law the act of 1850 in the fourth Section undertakes to give United States Commissioners "concurrent jurisdiction with the Judges of the District Court of the United States." "The Commissioners above named shall have concurrent jurisdiction with judges of the Circuit and District Courts of the United States," jurisdiction "to hear and determine the case." Is that appointing them to go through preliminary processes? You appoint a Commissioner generally to perform certain duties liable to be overlooked by a Court. Preliminacy acts may be performed by a Master in Chanrery, or other ministerial officers. But a Court and a Court alone, "hears and determines," and finally decides, questions of fact, and questions of law, which dispose of a man's life, his liberty, and his property. The remark is universal. If there be any exception, that exception is unconstitutional, and it is quite time enough to meet it when it arises.

Well, this law gives to the Commissioners of the United States court, not the duty of assisting in any subordinate manner the Circuit court, but it gives them concurrent jurisdiction; and if it comes before them, their decision is binding *in matters of law as well as of fact.* They not only have concurrent jurisdiction with the judges of the Circuit court, but they have paramount jurisdiction, by the operation of the act, over the Supreme Judicial court of the United States. The law that they decide in settling this claim—that law cannot be set aside, so far as the machinery of this act is concerned—that law cannot be set aside by the Supreme court of the United States. There is no mode in which it can be brought there. No! it is not intended to be brought there. The party claimant can take the captive where he chooses. It is said that this is to be preliminary. The claimant can take him where he pleases.

THE COMMISSIONER. That is not stated exactly right. The certificate must be issued that he has power to carry him from Massachusetts to Georgia.

MR. RANTOUL. He shall take him to Georgia, *if he chooses.*

THE COMMISSIONER. It is not optional.

MR. RANTOUL. There I differ from your Honor. The claimant is to be protected in carrying him to Georgia. But the captive is not at all protected. If the claimant carry him anywhere else, there is no remedy. That is my idea, and I think it is apparent upon reading the act. He shall be delivered up to the claimant. When the claimant has him, are there any restrictions put upon him?

THE COM. Certainly! In the sixth section he has authority "to take and remove such fugitive person back to the State or Territory whence he or she may have escaped," and no where else. He comes here and states whence he escaped; and he is entitled to take him back to the State from which he fled and to no other place.

MR. RANTOUL. That seems to me to be not the complete view of the case.

THE COMMISSIONER. It is my view of it.

MR. RANTOUL. In the sixth section the certificate *authorizes* him to take the slave back to the state or territory from which he escaped. But an authority does not imply an obligation or a duty. An authority is not an imperative command. I have an authority to do a certain act. Am I obliged to do it. This is, if the claimant shall desire to remove him to the state from which he escaped, his authority for doing so. Suppose, though I do not like to imagine it, that your Honor grants a warrant, and that the claimant is thereby authorized to take him back to Georgia. Suppose that by the authority of James Potter, for I would not imagine the agent here would do anything without his authority, this agent sells the negro in Maryland. Is that sale illegal?

THE COMMISSIONER. Most clearly!

MR. RANTOUL. I should be glad to know where it is held illegal. The moment he comes into a slave territory, that moment he may sell him, and be amenable to no one.

THE COMMISSIONER. I have not any doubt in the world but that you are mistaken. I have not any question but that the claimant must

take him into the State where he is authorized to take him, and that any attempt to sell him on the way would be void, and must be corrected.

Mr. Rantoul. If your Honor arrives at that conclusion, it must be by direct inspiration. For there is nothing of it written in the act. If that be the meaning of this law, however, what is to be done supposing the claimant does not comply with it? Where is the safeguard? It seems to me that he may carry him to Georgia, or to Texas, or to Cuba, or to Brazil, and there is not one word in the act to the contrary; nor can I find any inference to the contrary. I beg your Honor not to decide this point on a hasty consideration.

The Commissioner. I mean to give the utmost consideration to everything you suggest. I only tell you frankly, that I think the view you have taken of this subject is not well founded.

Mr. Rantoul. It is exceedingly important that these points should be carefully examined by the Commissioner, because there is no appeal.

The Commissioner. Suppose this be as you say. I wish you would remind me of the bearing of the argument.

Mr. Rantoul. The bearing is this. I have to argue on what I think may be said by the counsel for the claimant, because I am ignorant of the points he may raise. It may be said that the acts of the Commissioner are not acts of judicial power, because they are mere preliminary acts to some future trial; that they are like the duty which the Commissioner performs when a man is brought before him charged with crime upon the high seas, and is then, if a *prima facie* case is made out, committed by the Commissioner for trial. Now it may be said that that case is analogous to this, on the ground that this is preliminary to something else. I answer that this is preliminary to nothing. The claimant who has received the certificate, as I read this act, may take the fugitive where he pleases. Your Honor reads it differently. There is nothing in the act which declares that he *shall* carry him back, but that he *may* carry him back.

There are two powers in the certificate; one that he may take and hold that colored person as a slave; the other that he may carry him back to the State whence he came. Now I take it that he may waive either of these powers. He may emancipate him immediately upon the spot, or carry him to Maryland, stop there and sell him if he chooses. That is my impression of the effect of these two clauses, and of the hearing in this case. That the granting of this certificate is a judicial power in the understanding of sound lawyers, practised lawyers of great experience in the courts of the United States, and in precisely this class of cases, appears from the language of Mr. Attorney General Crittenden, in his published opinions, in the letter addressed to the President of the United States, on the 18th of Sept. 1850, before this law was signed. It seems that the President of the United States must have entertained doubts of the constitutionality of this act. He submitted a distinct inquiry to the Attorney General of the U. States. The Attorney General answers that question. In the course of that answer, although his attention was not especially directed to other questions, he aids us very much in settling other questions. The U. S. Att. General is not a man that makes use of vague language. He does not make a gross blunder in a grave official opinion. The language that he does use, and which I say he must have used understandingly, is "These officers and each of them have JUDICIAL POWER and jurisdiction, to hear, examine, and decide the case." The proceedings are a case. The U. S. Att. General sees that; for that is the very word used in the law. The law calls them a case. The Attorney General knowing what judicial power is, knowing that it is the hearing, examining, and deciding of cases, and that that, and nothing else, makes up the essence of judicial power, makes use very naturally of the very expression that he should use. Would he have said they have "judicial power" when they have not; and when the presumption that they have not is the only ground upon which they can assume to act? He might have said simply, jurisdiction of the case; but he uses words declaring distinctly that they have judicial power. He was not anticipating this objection.

The Attorney General not having his mind directly turned towards the objection to this law that it confers judicial power upon those who have no constitutional capacity to exercise it, gives as the first impression to which his mind arrives, that which he as a sound lawyer must arrive at, upon more mature examination—gives to the President U. S. the opinion that these officers have a JUDICIAL POWER, because they have the power to hear, examine, and decide the case. That *is* a Judicial Power.

Now a man who sits to hear a case only for the purpose of preparing it to come before another tribunal does not "decide" a case. A man who acts in a preliminary case does not *decide;* still less does he decide *finally*. And that the Commissioner is *to decide* is apparent from Mr. Crittenden's explanation of the Act, as well as from the words of the Act itself. This is to be regarded as the act and judgment of a judicial tribunal, having competent jurisdiction.

The manner in which an Attorney General of the U. S. would allude to a person who does not perform judicial acts is not the manner in which he alludes to the Commissioner in the letter referred to. The Commissioner performs an act of judicial power, of which the Attorney Gen. goes on to say, "Congress has constituted a tribunal, *with exclusive jurisdiction to determine summarily, and without appeal, who are fugitives from service.*" What! is a man to be arrested here and carried back to Georgia to determine whether he is to be considered a fugitive from service? Mr. Att'y Gen. Crittenden had not imagined what use would be made of his language—I doubt whether he would very seriously entertain the idea if it were suggested to him that the Commissioner is not a judicial officer. No! He tells you that Congress has constituted a tribunal—with power to determine summarily and without appeal, who shall be carried back? No! but who are fugitives from service. That is the main question under this act. And Mr. Attorney General says your

Honor is constituted a tribunal to determine ultimately and without appeal who are fugitives from service. Is not that an act of judicial power? I shall have a few remarks to make upon fugitives *from justice* hereafter.

The judgment is conclusive. Conclusive of what? *Conclusive of the fact that he is a fugitive from Service!* This is no theory of mine. It would be even more grossly unconstitutional than it is, if it were otherwise. I know I am saying a bold thing. I go one step farther and say if this be a preliminary proceeding to determine whether he shall be held to service, then it is a more gross violation of the Constitution of the United States than if it were what I have argued that it is. Look and see if it be not so. What is to be said of the Commissioner who makes this a preliminary step? Here is the clause under which this power is claimed.

Article 4. Sect. 2. Par. 3. "No person HELD to service or labor in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service of labor, but shall be delivered up, on claim of the party to whom such service or labor may be due."

What is to be ascertained here? Contrast this with the preceding clause and you will see what is to be done with fugitives *from justice* and how different it is from what is to be done with fugitives from service.

Art. 4. Sect. 2 par. 2. "A person *charged* in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State shall on demand of the Executive authority of the State from which he fled be delivered up to be removed to the State having jurisdiction of the crime."

What have you to ascertain? The Executive sends here a requisition for the delivery of a man who is said to be guilty of crime. You have simply to ascertain whether he be *charged*. Have you to determine whether he be guilty? You have nothing to do with it. He may prove an *alibi*. It is nothing to the purpose. Is he legally "charged?" If he is he must be given up. For whose benefit is this? For the benefit of the man charged; that he may have a trial by a jury of the vicinage. The framers of the Constitution could not have done otherwise unless they had chosen to contradict their own work. They said, that a man who commits an offence should be tried in the vicinage. It was a principle to which they were not disposed to allow an exception; and in order that there might not be an exception to that principle, they say if a man has departed from the vicinage where the crime is alleged to have been committed, send him back to that vicinage, and there let him have his trial. This arrangement is most humane. He is presumed to be innocent. Where shall he meet the suspicion against him? Where he can meet it best! The man is charged with murder, it is true. He is charged under such circumstances as to make it proper that he should be tried, just where a man would prefer to have the question tried, if he be innocent, viz: in the vicinity of the place where the murder is said to have been committed. Here is a wise provision reverberating from the most remote decrees of justice down to our time.—Before you carry them back to the vicinage what shall you do? Try them? That would be absurd. You are to ascertain whether criminals are charged. The man who is *charged* is to be carried back.

Now I come to that contrast between this section and the next. Does your Honor suppose that opposite language has the same meaning? When both things are alike do they call one white and the other black? We are told that there is an analogy between them. No, sir; I thank God there is no analogy. But instead of an analogy a perfect contrast. It is the same analogy as is shown between the beginning and the end of the alphabet; one is *Alpha* and the other *Omega*.

If a man be *charged* with crime he is to be sent home for trial. Is a person charged with escaping from service to be sent home? The constitution has said that a person *held* to service shall be delivered up, and nobody else is to be given up, and therefore you are to decide, what Mr. Attorney Gen. Crittenden says YOU DO DECIDE, viz: the question whether a man is held to service or labor, or not. The question is not is he claimed? is he charged? But your Honor is to decide the great judicial question, Is he "*held*" to service or labor?

THE COMMISSIONER. Do you mean to argue that the question is not examinable elsewhere after the certificate of the Commissioner has been issued?

MR. RANTOUL. I hold that there is no provision for a future examination in this act.

THE COMMISSIONER. What I wish you to come to is to show me that it is unconstitutional for Congress to omit to have that provision.

MR. RANTOUL. The decision of this case is final, and there is no appeal from your Honor's decree.

THE COMMISSIONER. So far as the restoration of the fugitive is concerned, to the State from which he fled, it is final; but so far as the permanent liberty of the fugitive is concerned, I wish you to show me that it is final.

MR. RANTOUL. The Constitution does not authorize Congress to send back any body except the person "held to service." Now, is your Honor going to ask me whether the fact that he is held to service can be ascertained afterwards? Is he held to service or labor? For if he be not, you cannot send him back. If the Constitution had said that persons guilty of crime shall be sent back, there would have necessarily been a full trial adequate to determine that question before criminals could be sent back. The Constitution does not allow the citizens of Massachusetts, who are merely claimed as fugitives from service, to be sent back, until it is ascertained whether that claim is based upon fact, and that the person claimed is actually held. If I do not make myself understood, I despair of ever making myself understood.

THE COMMISSIONER. I believe I understand you, but do not appreciate the distinction which is drawn between those charged in one instance and those held in the other.

MR. RANTOUL. I will try to make that distinction clear. If the clause with reference to fugitives from service were really similar to the clause referring to fugitives from justice, it wou d have said, no person *claimed* to be held

to service in one State, under the laws thereof, escaping into another shall be discharged, but shall be delivered up, &c. Is not that different language? The Constitution says no person "*held*" to service or labor shall be discharged, but shall be delivered up. He is delivered up to the person to whom the service *is due*. The question is to be *settled, finally and conclusively*, Does he owe service to the person who claims him?

THE COMMISSIONER. Settled undoubtedly, and settled finally, for the purposes of removal. Now the question is whether it is reexaminable elsewhere; in other words whether the whole question of the liberty of the party is not to be tried, provided the State has process for trying it, in the State into which he is returned. Now Congress has omitted to make such provision. It seems to me, therefore, that to satisfy me that the law is unconstitutional, you must show that it is unconstitutional for Congress to omit this provision.

MR. RANTOUL. Your Honor does not apprehend my position. The condition is a condition precedent. *The person held* is to be sent back, and *nobody else*. Is your Honor to guess at this? Is your Honor to take a prima facie case? No! Your Honor is *to "determine"* whether he is HELD to service or else under the constitution he cannot be remanded. That is my idea.

THE COM. I understand that perfectly well.

MR. RANTOUL. And now I ask, admitting that your Honor is to *determine* whether or not this man is *held to service*, whether that act is not an act of judicial power. I take either horn of the dilemma. If the act requires that the alleged fugitive from service shall be sent back without finding out whether or not he be actually *held*, the act is unconstitutional because there is no power given to Congress in the Constitution to pass such an act. Congress, if it have any power in the premises, can only pass an act declaring that the person really *held* shall be given up. If Congress undertakes to do more, its acts are void. On the other hand if it is to be *first* ascertained whether or not the party claimed *be really held* to service, then the decision of the Commissioner is final; his decree is the last act of JUDICIAL POWER, and according to the Constitution the Commissioner has no such authority, because he cannot exercise judicial power, not having the unchangeable salary or the permanent tenure of office which Judges possess, and without which they cannot be Judges.

A prima facie case is all that is required in the instance of the fugitive from justice. But it is not all in the case of a fugitive from service, who is the inhabitant of a free state. In the case of any man living under the government of Massachusetts, the presumption is that he is a free man. By the Constitution of Massachusetts "all men are born free and equal;" and the "right of enjoying and defending" liberty is among the "natural, essential, and unalienable" rights of man. He is then clothed by law with this presumption. Neither the law of Massachusetts, nor this act of Congress, founds any presumption upon color. Neither of them founds anything in the nature of a presumption upon the short or the long time during which the alleged fugitive from service has been resident in Massachusetts. Now in these particulars of color, and length of residence, and in all other particulars, the presumption is for all persons precisely the same, not only under the Declaration of Independence, under the Constitution of the United States, under the Constitution and the laws of Massachusetts, but also under this very act, under the authority of which your Honor is undertaking to proceed. There is then a presumption which applies to "ALL MEN," black men and white men —to all men created in the image of their Maker, and I have not yet heard that that category includes the idea of any particular color—to all men the presumption attaches that they are free until proved to be slaves, just as universally and inflexibly as there is a presumption that the man charged with crime is innocent until his guilt has been proved.

This being so, what is the condition before the law, and the right to be protected under the law, of a man, being free? And that is the presumption equally with regard to every man, claimed or not claimed. If a man comes and claims me, the presumption is that I do not owe him any service. The presumption is the same, and equally entire, with regard to my client behind me. A man having his wife and family here in Massachusetts shall not be dragged away thousands of miles to have the question of his liberty settled. I am subject to the laws of the United States. Suppose a man should come from Texas, and carry me to Texas on the ground that I owe him service; and when he has carried me there, it shall appear that I do not owe him service, and he should say to me, "We wish you a pleasant journey back again to Massachusetts. We are sorry; but we have unfortunately and unintentionally selected the wrong person." Would that be any answer to the person thus dragged away from his home? Or would it be any more satisfactory to a free colored man to be told that he should have a trial on a cotton plantation, where he might be horsewhipped if he undertook to mention a lawyer, or even if allowed to find one willing to try his case, he would have no money with which to fee his advocate. Most miserable sophistry, that! The possibility of such a trial would be no answer to the man who claims that he is a freeman, and who says to this court, Unless I am actually *held to service*, the claimant, according to the Constitution of the United States, has no right to touch a hair of my head. Is there any law in Georgia, produced here, under which it is shown this man is to have his trial? If he have such trial, is it not a proceeding *de novo*? Is there any probability of such a trial, or any *possibility* which your Honor would not laugh out of court, in any other case than this? Is there any possibility contemplated in this act that he would have a trial when he gets there? This act provides for giving him up. It is said, Give him up, and somebody *will, perhaps, determine* whether he is really held to service. The constitution says only that a man "*held to service*," shall be given up. And under that I hold that no court DARE to deliver up a man because he is *suspected of being held to service*, and because if this court make a mistake, that mistake MAY be corrected PERHAPS,

some where else, by proceedings not provided for in the law. Is that a position to be taken before the country? Is that a position to be taken before the God to whom you and I are to answer hereafter? I ask, if your Honor is to act in this case, that you shall find out whether this person BE truly "held to service;" that you shall ascertain whether the service of Thomas Sims be *"due"* to James Potter. If it be not, then Thomas Sims cannot be given back. Then if that question is to be tried, if it is to be determined, without appeal, whether he BE held to service, and whether that service BE due to the claimant, then it is the exercise of the highest judicial power in the country—the highest judicial power known to the Constitution. The determination of the liberty of a free citizen—if that be not an act of judicial power, in the name of the God of freedom, what is judicial power? That is the question. And that question I ask this court to decide upon.

MONDAY AFTERNOON, April 7th.

MR. RANTOUL continued. I had concluded, may it please your Honor, when the court adjourned, the remarks which I intended to offer upon the first point presented yesterday. I now proceed to discuss the second proposition which we declared our intention to submit.

That the procedure is a suit between the claimant and the captive, involving an alleged right of property on the one hand, and the right of personal liberty on the other, and that either party therefore is entitled to a trial by jury; and that the law which purports to authorize the delivery of the captive to the claimant, denying him the privilege of such trial, and which he here claims under judicial process, is unconstitutional and void.

The question presented in this proposition is that of the trial guaranteed to a fugitive claimed. The fifth article of the amendments to the constitution provides that no person shall "be deprived of life, liberty, or property, without due process of law." Then the seventh article of the amendments provides that "In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

Upon this clause in the fifth article of the amendments, in the third of Story's Commentaries on the constitution, page 661, section 1783, we find the following language:

"The other part of the clause is but an enlargement of the language of MAGNA CHARTA, *'nec super eum ibimus, nec super eum mittimus, nisi per legale judicium parium suorum, vel per legem terræ,'* neither will we pass upon him, or condemn him but by the lawful judgment of his peers, or by the law of the land. Lord Coke says, that these latter words, *per legem terræ* (by the law of the land,) mean by due process of law, that is [not] without due presentment or indictment, and being brought into answer thereto by due process of the common law. So that this clause in effect affirms *the right of trial according to the process and proceedings of the Common Law.*"

I suppose it is well understood among American lawyers that this clause of the amendment to the constitution of the United States is, at least, as broad in its meaning as the original clause in the provisions of the great charter from which it is copied. The provision of the great charter is one easily understood, if we refer to the condition of things out of which it grew. The great charter of King John was in fact a treaty. It was a treaty of two parties who met with drawn swords in their hands, and was ratified by the monarch partially under compulsion. "We will not go down upon him," &c., referred not merely to legal proceedings, but also, most probably, to a military invasion of the lord with whom he had a quarrel; to the ravaging of his fields and the razing of his castle. The monarch agreed that he would not make any attack upon the life, liberty or property of any baron that was his vassal, either through his civil officers, or by a military array, except according to the legal judgment of his peers, or the law of the land. Now this phrase *"per legale judicium parium suorum, vel per legem terræ,"* might be thought to refer to trial by jury, and also by some other mode.

It is certain that it does not. I do not insist on calling it by the name in all cases, of trial by jury; but it was always in substance the same, and in form always closely analogous to that. What was the meaning of the expressions used, as understood in the beginning of the 13th century? If we find out what *judicium parium suorum* means we shall determine the meaning of the rest. This charter was signed by King John in the month of June in the year 1215.—He had been previously summoned to a judgment of his peers; he therefore understood the import of this provision. And who were his peers?

These words were previously used in Germany as well as in France and Britain. An Emperor of the house of Hapsburgh had inserted a similar provision into the constitution made many years previously. A king of Hungary, then the bulwark of Christendom, had done the same. The barons at Runnymede thought King John should do no less.

It is easy upon examining this subject, upon tracing the origin of the introduction of the trial by jury, the circumstances that preceded it, and all the different circumstances that bear upon the meaning of the words for which we have substituted the phrase "due process of law," which, to be sure, twenty-four hours is a pretty short time to accomplish—it is easy upon a thorough examination to determine what that meaning is. When John was summoned to go over to France to be tried for treason, in murdering his lawful monarch, his nephew Arthur, a safe conduct was, at his request, granted to him by Philippe Augustus to go to that country. He sent word, that if he could be favored with a safe conduct *to go and to return*, he would obey the summons. The answer was that he should have a safe conduct to go, and also to return *si judicium parium suorum hoc permittat*, if the judgment of his peers would permit him to return. He was Duke of Normandy. His peers therefore were the six lay peers and the six ecclesiastical peers of France. He did not appear, and they condemned him for contumacy, or as it was expressed, *in contumaciam*. If this phrase, the judgment of his peers, when applied to a vassal, signified, as it certainly did, the judgment of the vassals holding their lands from the same lord from whom he held, then it

is obvious that the trial could not always be had where the offence was committed, which was another feudal principle pretty well established, viz:, that the trial must be there held. If a vassal of any baron of Northumberland committed a crime in the south of England, if he was obliged to be tried by his peers—vassals of the same barony with himself—he would have to be carried back to a distant part of the country. That would not answer, because the authorities of the vicinity where the wrong was done would not trust to the chance of justice being done there. Sometimes he was obliged to be tried then by somebody's else peers, and not by his own. If in another part of the country from his own home, he must be tried not by the local law, but by the law of the whole realm of England. The King's Bench, sitting at different times, in different places, was gradually establishing a common system of rules, which became the common law in different parts of the kingdom alike. There were laws of different kinds in different parts of the country. There was one law for Northumberland and another for York, &c. If he were an inferior vassal, tried by his own peers, he was to be tried by the local law. If he was a peer, he was to be tried by the peerage of England. And if he was obliged to be tried, at a distance from his home, where the crime was committed, and of course could not be tried by his own peers, he was tried by the common law of England, *per legem terræ*, or *per legem Angliæ*, the law of the land, because it would not have been fair to try him by the local law of a section or region with which he was unacquainted.

This is the result of what little I have discovered about the meaning of these words. I would undertake to obtain a hundred or two hundred authorities upon it if there was a necessity for it, and time could be granted. A man when he was tried *per legem terræ* had a trial by the law of England which gave him a jury. And when he was tried at home, by his own peers he was tried *per legale judicium pariu suorum* which might be three men, seven men, twenty men, or five hundred men, under feudal principles, and before the jury system was fully settled! In Normandy, he was tried by Norman law, on the high seas by Marine law, and not by English law.

All this settles down upon the proposition that this phrase of Magna Charta was equivalent to a guarantee of jury trial. Our equivalent to it is a jury trial. And Lord Coke says that these words *per legem terræ*, mean due process of law. Our fathers copied this phrase from Coke, and said due process of law. *Nisi per legale judicium parium suorum, vel per legem terræ*, are supposed to be all summed up, and contained in "due process of law," and those words contain, not only jury trial, but other securities of liberty connected with it, in the long controversies with royal power; and with it, prostrated at one blow by the Act of Congress now under consideration.

I will refer to Coke's 2d Institute, vol. 1, chapter 29, page 50.

"*Nisi per legem terræ.* But by the law of the land. For the true sense and exposition of these words, see the Stat. of 37, E. 3, cap. 8, where the words [unless] by the law of the land are rendered without due process of law, for there it is said, though it be contained in the great charter, that no man be taken, imprisoned or put out of his freehold without process of the law, that is, by indictment or presentment of good and lawful men, where such deeds be done in due manner, or by writ original of the common law.

"Without being brought in to answer, but by due process of the common law.

"No man be put to answer without presentment before justices, or thing of record, or by due process, or by writ original, *according to the old law of the land.*

"Wherein it is to be observed that this chapter is but *declaratory of the old law of England.* Rot. Parliament 43, E. 3, Nu. 22, 23. The case of Sir John a Lee, the Steward of the King's House."

Then he goes on to distinguish from marine law.

"If any injury, robbery, felony, or other offence be done upon the high sea, *lex terræ* extendeth not to it. Therefore the Admiral has conusance thereof, and may proceed according to the marine law, by imprisonment of the body and other proceedings, as have been allowed by the law of the realm.

"And so if two Englishmen go into a foreign kingdom, and fight there, and one does murder the other, *lex terræ* extendeth not hereunto; but the offence shall be heard and determined before the constable and marshal, and such proceedings shall be there, by attaching of the body, and otherwise, as the law, and custom of that court have been allowed by the laws of the realm.

"Against this ancient and fundamental law, and in the face thereof, I find an act of Parliament made, that at will justices of assize and justices of the peace (without any finding or presentment by the verdict of twelve men) upon above information for the king before them made, should have full power and authority by their discretion, to hear and determine all offences and contempts, committed or done by any person or persons, against the form, ordinance, and effect of any statute, made and not repealed, &c. By color of which act, shaking this fundamental law, it is not credible what horrible oppressions and exactions, to the undoing of infinite numbers of people, were committed by Sir Richard Empson, Knight, and Edmund Dudley, being justices of the peace throughout England; and upon this unjust and injurious act, (as commonly in like cases it falleth out) *a new office was erected*, and they made masters of the king's forfeitures.

"But at the parliament holden in the first year of Henry VIII, this act of II H. 7, is annulled and made void, and repealed; and the reason thereof is yielded, for by that form of the said act it was manifestly known that many sinister and crafty feigned and forged informations had been pursued against divers of the King's subjects to the great damage and wrongful vexation; and the ill success hereof, and the fearful ends of those two oppressors should deter others from committing the like," they came to a very sudden death; "and should admonish parliaments

that instead of their ordinary and previous trial *per legem terræ* they bring not an absolute and partial trial by discretion."

He then goes on to give a variety of cautions against departing at any time from this old principle. I continue on p. 52.

"The warrant or *mittimus* containing a lawful cause ought to have a lawful conclusion, viz: and him safely to keep *until he be delivered up* and *not* until the *party committing* doth further order. And this doth evidently appear by the writs of *habeas corpus* both on the King's Bench, and Common Pleas, Exchequer and Chancery."

Page 53. "But if any man, by color of any authority, where he had not any in that particular case, arrest or imprison any man, or cause him to be arrested or imprisoned, this is against this act, *and it is most hateful when it is done by countenance of justice.*"

Page 54. "It is enacted if any man be arrested or imprisoned against the form of this Great Charter that he be brought to his answer and have right.

"The philosophical poet doth notably describe the damnable and damned proceedings of the judge of hell,

'Gnosius hic Rhadamanthus habet durissima regna,
Castigatque, auditque dolos, subigitque fateri.'

"And in another place,

**** *'leges fixit pretio atque refixit.'*

"First he punisheth, and then he heareth; and lastly compelleth to confess, and maketh and marreth laws at his pleasure; like as the centurion in the holy history did to St. Paul: for the text saith, *"Centurio apprehendi Paulum jussit, et se catenis ligari et tunc interrogabat quis fuisset, et quid fecisset;"* but good judges and justices abhor these courses.

"Now it may be demanded if a man be taken or committed to prison *contra legem terræ*, against the law of the land, what remedy hath the party grieved?"

Then he goes on with various remedies. But I have read enough to show the importance which Coke attached to that section of the great charter, and the value with which he esteemed that bulwark of liberty which that section of the great charter was meant to erect; and this clause of the Constitution was meant to secure —I do not want to take up the time of the court by reading from the books—to secure the trial by jury. It was meant to prevent trial without confronting the witnesses. It was meant to prevent all *ex parte* proceedings. It was meant to prevent all secret, unjust proceedings. There were some which were star chamber proceedings. Henry the Eighth—compared to a roaring lion by Lord Herbert, his flatterer and biographer, and to Nero, for the sternness of his temper—appointed commissioners, tried persons, by reading depositions and other *ex parte* testimony, &c., but these commissions were afterwards revoked. Such practices, the dispensing with a jury, taking testimony without confronting witnesses, &c., all these proceedings it was, against which the English charter guarded, and our constitution was intended to guard, when they said "No man shall be deprived of life, liberty or property, without due process of law." This included trial by jury; but whether due process of law does include that right, perhaps it is not necessary to argue under the constitution of the United States, because it is provided in the seventh amendment to the constitution, that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." Is this a suit at common law?

I will refer to the third of Story's Commentaries, page 506, section 1639, where he gives us his idea on this subject: "It is observable that the language is, that the 'judicial power shall extend to all cases *in law and equity*,' arising under the constitution, laws and treaties of the United States. What is to be understood by 'cases *in law* and equity' in this clause? Plainly *cases of the common law*, as contradistinguished from cases in *equity*, according to the known distinction in the jurisprudence of England, which our ancestors brought with them on their emigration; and with which all the American States were familiarly acquainted. Here then, at least, the constitution of the U. States appeals to, and adopts the common law, to the extent of making it a rule in the pursuit of remedial justice in the courts of the Union. If the remedy must be in law, or in equity, according to the course of proceedings at the common law, in cases arising under the constitution, laws and treaties of the United States, it would seem irresistibly to follow, that the principles of decision by which these remedies must be administered, must be derived from the same source. Hitherto such has been the uniform rule of interpretation, and mode of administering justice, in civil cases, in the courts of the United States in this class of cases."

Section 1640: "Another inquiry may be what constitutes a *case* within the meaning of this clause. It is clear that the judicial department is authorized to exercise jurisdiction to the full extent of the constitution, laws and treaties of the United States, *whenever any question respecting them shall assume such a form that the judicial power is capable of acting upon it.*"

Now when a man claims that another owes him service there is a fact capable of being judicially ascertained. He states that the person has escaped from another State. That is another fact to be judicially ascertained. He claims him under some provisions of law. Those are capable of being determined by the judicial power acting upon the questions which arise. "When it [the *claim*] has assumed such a form, it then becomes *a case;* and then, and not till then, THE JUDICIAL POWER attaches to it," and not the ministerial power. "A case then, in the sense of this clause of the constitution arises when some subject touching the constitution, laws or treaties of the United States, is submitted to the courts, by a party, who asserts his rights in a form prescribed by law. In other words, a case is a suit in law, or equity, instituted according to the regular course of judicial proceedings; and when it involves any question arising under the constitution, laws, or treaties of the United States, *it is within the* JUDICIAL POWER *confided to the Union.*"

"A case" here "is a suit in law, or equity." This whole proceeding is either a suit at law or equity. No one can consider it a suit in equity. It is a suit at law. "In suits at com-

mon law!" What does that phrase mean? Not according to the proceedings at common law, but a suit at law, as distinguished from a suit in equity or admiralty. This, then, is a case of a suit at law; and where the amount in question exceeds twenty dollars the party has his right of trial by jury. Now is this a suit at common law, where the value exceeds the sum of twenty dollars? It is not necessary to prove by any argument that a man's liberty is worth more than twenty dollars. I will refer to the eighth of Peters's Reports, page 44, Lee v. Lee. The case was one in the first place to determine whether the plaintiffs did owe service—whether they were the slaves of the defendant; and afterwards the question arose whether the persons claimed as slaves could appeal. It was under the rule which provides that the appeal could be had if the value in controversy exceeded one thousand dollars. The defendant contended that the appeal could not be had because the value of the alleged slaves was not proved to exceed one thousand dollars. The court decided as follows: "The matter in dispute in this case is the freedom of the petitioners. The judgment in the court below is against their freedom. The matter in dispute is, therefore, to the plaintiffs in error, THE VALUE OF THEIR FREEDOM, *and this is not susceptible of a pecuniary valuation.* Had the judgment been in favor of the petitioners, and the writ of error brought by the party claiming to be the owner, the value of the slaves, *as property*, would have been the matter in dispute, and affidavits might be admitted to ascertain such value. *But affidavits estimating the value of freedom are entirely inadmissible; and no doubt is entertained of the jurisdiction of the court.*"

A man's freedom, therefore, in the Courts of the United States, is held to be of greater value than the sum of one thousand dollars under all possible, or conceivable circumstances, though he may be an idiot, or in the last hour of life, or from any other cause, worthless, as property, to the claimant of his services.

The court went on upon the sole ground that they considered that *any man's freedom* was worth more than one thousand dollars; that it would be a mockery to inquire whether a man's freedom is worth only one thousand dollars. I stand upon this decision when I say that in this case the value exceeds twenty dollars, and that therefore "The right of trial by jury shall be preserved."

This is a controversy—I refer your Honor to the cases I read this forenoon—this is a controversy in common law, and the party has a right to trial by jury. That right of trial by jury is taken away by this act, and being so taken away the act becomes unconstitutional.

I have said all that I wish to say upon the point that he is entitled to a trial by jury; and that if this act denies it to him it is unconstitutional. It is necessary, perhaps for me to go further, and argue that the act does deprive him of it; because this may be denied on the ground that he may have his trial by jury somewhere else. Now I submit that this is no answer to the position I lay down. Whatever he may have elsewhere, and by virtue of other laws than those of the United States, is not to the purpose. The question is, what may he have under this law, and under the laws of the United States. We cannot look to the separate contingencies in each separate State. And suppose it were proved that in a particular State there could be a fair trial. Still it does not appear that in every one of the fifteen States there is an opportunity guarantied for a fair trial. And even if that were proved, it is not to the purpose; for the states might alter their laws; and the United States cannot say to the State of Georgia, You shall give this man a jury trial, if he desires it.

We have then no right to look beyond our own State and District under the United States laws, to ascertain whether this man has a right to jury trial, by other laws in another State.—We have only the right to look to the legislation of Congress. And then, confining our attention to Congress, and Congress having provided no jury trial for him, they do deprive him of a jury trial. The answer is that he *may* not be so deprived. Are we to be turned over to entire uncertainty? We have no right to inquire what the State of Georgia may do in the matter, or what her right is to do, when we are acting only according to the laws of the United States. We are to get justice from these laws, or not at all. This act does deprive him of all right to trial by jury, because when it takes away his liberty, it does deprive him of *trial by jury according to the laws of the United States.*—Therefore your Honor has no right to look beyond these laws.

THE COM. What is there to prevent the general government, in case they see fit to do it, to confide in the State of Georgia that she will give this man his trial by jury?

MR. RANTOUL. There is this. The language of this clause is, "No person held to service or labor shall be discharged." Now the fact implied in that language "held to service," must be ascertained. We cannot give him up upon a presumption. We have no right to deliver up a man *suspected* to be held to labor. We have no right to deliver up a man *charged* with being a fugitive from service, but he must be HELD to labor. How is it to appear that a man is held to service or labor? When I ask how it is to be done, I am answered by a possibility that the State of Georgia may do it, and that Congress may trust to the possibility that their law will do it. If it had been said, a man guilty of treason, felony, or other crime shall be delivered up, would any court—I speak not of that court below of which I read in Coke—would any court on earth declare that he should be given up until the offence had first been proved?

Here are two classes of persons. One class is to be delivered up when *charged.* The other when they are *known to be held.* The presumption being that this latter class is not held, this court has no right to give up this man because he is suspected. It has no more right to give him up because a *prima facie* case is made out against him, than if no such case was made out at all; because the Constitution says nothing about a *prima facie* case, but that he is to be given up only if he be held.

Why am I compelled to argue, over and over again, that all this can be preliminary to noth-

ing but what Congress guessed somebody might do, and not to any trial that Congress has provided for; not to any trial contemplated, as shown in this whole act, from beginning to end? There is not a word there which shows that he was to take a trial in Georgia. If Congress had contemplated a trial in the places to which fugitives from service were returned, they would have compelled the master to give guaranties. They would have said that the fugitive should be returned upon the masters giving bond that he shall have a jury trial. Then the witnesses also shall give bonds that they would appear; and then they would have made some provision that he would be properly defended; and they would not have entrusted all these securities to the keeping of the claimant, but some impartial authority, designated by the law, would have intervened between the parties, and guarded the rights of the captive. *Ne agnam committere lupo;* the lamb is not to be delivered to the wolf, except in the single case where you intend that the lamb shall be eaten.

If they had ordered a subsequent trial, and provided securities for it, this trial would have been preliminary to something. It is now preliminary to nothing. We cannot suppose it to be a preamble when nothing follows. We cannot suppose it to be preliminary when nothing probable can be conceived of to follow it, except in the dreams of a man's imagination. What is this preliminary to? To his working on a cotton plantation. The probability, as applying to this class of cases, is that the persons returned under the law will not, as a general thing, have jury trials, in the states to which they are returned. I do not know as the principle would be different, if the probabilities were the other way. How stands the case if the man to whom the fugitive is committed by his Honor is disposed to act fairly? He gets this man home upon a plantation. Says Sims "I want a jury trial." "Why so," returns his master. "Because I am not your slave." Suppose his master really believes him to be his slave, as he may, and yet be mistaken in that belief, is it possible that he would carry him down to the court, and pay all the jury fees against himself, and the counsel on both sides, for arguing the case, in order that his slave may have a fair jury trial? No! But it is extremely probable that fugitives, once carried back, will have no trial after they are given up. Propositions were made in Congress for allowing provisions for jury trials to be inserted, in this act, and those propositions were rejected. This whole proceeding stands by itself, a substantive act of judicial power, and THE VERY HIGHEST ACT OF JUDICIAL POWER, the depriving of a man, and of his descendants after him, for countless generations, of liberty, till his and their death. This decision is practically final and conclusive, until death shall loosen the chains which your Honor is now asked to rivet upon Thomas Sims.

I come then to the next point, that the transcript of testimony taken before the magistrates of a State Court in Georgia, and of the judgment thereupon by such magistrates, is incompetent evidence, Congress having no power to confer upon State Courts or magistrates judicial authority to determine conclusively, or otherwise, upon the effect of evidence to be used in a suit pending, or to be tried, in another State, or before another tribunal.

The doctrine grows out of the same clause:

Art. iii. Sec. 1. "The judicial power of the United States shall be vested in one Supreme Court, and in such Inferior Courts as the Congress may, from time to time, ordain and establish."

Now, is the Inferior Court of the State of Georgia a court of the United States? They do not hold their office by any United States commission. They do not hold their power from the United States. The United States, by this act, do not undertake to constitute them as a court. The United States, by a mere *descriptio personarum*, take certain individuals in the State of Georgia. They select them because they are the judges of the state court. But on selecting them, they do not make them a court of the United States any more than if they had taken the postmasters of Georgia. If they had said all the postmasters may take these affidavits, and send them on to be used, would that enactment have invested the postmasters with judicial power? Of course not! Because Congress cannot invest any body with judicial power, except the judges appointed for life, with regular and stated salaries.

Now, I suppose nobody will pretend that the courts here spoken of are United States Courts.

The other point upon which I think the counsel will rely is, that the exercise of the power devolved on the State judges is not the exercise of a JUDICIAL POWER. Is that document the product of a judicial act? They have tried this case in the inferior Court of Chatham County, Georgia. They have sent here documents which are conclusive upon two points out of three. But yet if your Honor were to know, as a matter of fact, that the alleged fugitive had made no escape, but that he had been brought by force—suppose your Honor yourself had brought him here by force, and hence knew it as a certainty, your Honor would yet be bound according to this act by this document, which is made conclusive against all evidence. Such are the terms of this act. Whether the court would be called upon in the case I suppose, to give a different interpretation to these terms because of the absurdity, I do not propose to discuss. It is not easy to see how it would be in their power to do so.

Is it not an exercise of judicial power to decide *any one* of the *three* questions which the case involves? The three questions are, Did a person owe service in Georgia to a certain man, the claimant? Has that person escaped from Georgia? Is that fugitive the identical person who is here before this Court? Two of these questions are finally and conclusively settled, and finally too, upon a proceeding which is as really A JUDICIAL TRIAL, though it is *ex parte*, as if the Court in Georgia had tried a man for murder and found him guilty in his absence, leaving the identity of the convict to be settled after his seizure. True, they are investigating a question of property. But the result of that investigation is final. Suppose the decision covered all three points. Suppose it were final and conclusive that he did owe service; that he did escape; and that the man behind me is the very

man who did owe service, and escaped. Then it must have been an exercise of judicial power because it was necessary for the judge to weigh the facts which were presented, and to determine the considerations, both in arguing the facts, and construing the law, which were presented for and against the conclusion at which he arrived. And if the decision in Georgia covers two of these points, it is just as much a judicial act, because it is made conclusive with regard to all which it covers; and no judicial mind is ever afterwards to apply itself to so much of the case as has been determined already in Georgia.

If I am right in the general supposition that Congress cannot invest persons not filling the responsible office of judges of the United States Courts, that is, any other persons selected by the use of a mere *descriptio personarum*, with the duties of a judge—if there be any truth in that general doctrine, most certainly it applies more strongly to this case than to almost any other that can be conceived of; because this court of Georgia has undertaken, by virtue of this law, to do something that shall operate in a way that I very much doubt whether they could have done to so operate in Georgia itself. Here is a question of property. A citizen of Georgia claims that he owns property in this person. If two individuals had claimed him and the value of this man were in controversy in Georgia, that would be no stronger case than where one person claims him. For in the one case the controversy would be between two persons on a question of property; and in the other case it would be between the person claiming to own him and the alleged fugitive who claims to own himself, to have the entire property in his own flesh, and sinews, and bones, and their uses. I say if two parties had claimed this man, in the State of Georgia, the trial of that question of property would have been an open trial; the public would have had a right to be present, as they have a right to be present in all trials, except in the Spanish Inquisition, and in the old English Star Chamber, and Courts of that class. Each party would have a right to confront the witnesses of the other party; depositions taken behind their backs without notice, could not have been used; all the precautions by which the common law has guarded property would have been observed, and finally a jury of the country would have passed upon the case. But here come these Georgia depositions; the court of Georgia regard none of these precautions, but, under this anomalous statute, undertake to do an act of much more arbitrary power than they would have done, or dreamed of doing if two of Georgia's own citizens had adversely claimed this same man in that State. Here then is an extraordinary exercise of judicial power, one unparalleled in its extent, either in Georgia, or in Massachusetts, or under any other law of the United States, or any case in England.

I read then, for it has special bearing upon this point, the case of Martin *vs.* Hunter's Lessee in the first of Wheaton's Reports, page 327. "The third article of the Constitution is that which must principally attract our attention." It is the opinion of the court as delivered by Judge Story. "The first section declares 'The judicial power of the U. States shall be vested in one Supreme Court and in such other inferior Courts as the Congress may from time to time ordain and establish.' The second section declares that 'THE JUDICIAL POWER shall extend to ALL CASES IN LAW, or equity, *arising under this Constitution, and the laws of the United States*, and the treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming lands under the grants of different States; and between a State or the citizens thereof and foreign States, citizens or subjects.' It then proceeds to declare that in all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have *original jurisdiction*. In ALL THE OTHER CASES before mentioned *the Supreme Court* shall have *appellate jurisdiction* both as to law, and fact, with such exceptions and under such regulations as the Congress shall make.

"Such is the language of the article creating and *defining the Judicial power* of the U. S. *It is the voice of the whole American people solemnly declared* in establishing one great department of that government, which was in many respects national, and in all Supreme. It is a part of the very same instrument which was to act not merely upon individuals, but upon States; and to deprive them altogether of the exercise of some powers of sovereignty, and to restrain and regulate them in the exercise of others.

"Let this article be carefully weighed and considered. The language of the article throughout is manifestly designed to be mandatory upon the legislature. Its obligatory force is so imperative that Congress could not, without a violation of its duty, have refused to carry it into operation. 'The Judicial power of the United States *shall be vested*' (not may be vested) 'in one Supreme Court and in such inferior Courts as Congress may from time to time ordain and establish.' Could Congress have lawfully refused to create a Supreme Court, or to vest in it the Constitutional Jurisdiction? 'The judges both of the Supreme and inferior Courts *shall hold* their offices during good behavior, and *shall* at stated times receive for their services a compensation which shall not be diminished during their continuance in office!' *Could Congress create or limit any other tenure of the judicial office? Could they refuse to pay at stated times the stipulated salary or diminish it during the continuance in office?* But one answer can be given to these questions: it must be in the negative. The object of the Constitution was to establish three great departments of government: the legislative, the executive, and the judicial departments. The first was to pass laws. The second to approve and execute them, *and the third to expound and enforce them.* Without the latter it would be impossible to carry into effect some of the express provisions of the constitution. How otherwise could crimes against the United

States be tried and punished? How could causes between two States be heard and determined? The judicial power must therefore be vested in some court, by Congress; and to suppose that it was not an obligation binding on them, but might at their pleasure be omitted, or declined, is to suppose that, under the sanction of the constitution, they might defeat the constitution itself. A construction which would lead to such a result cannot be sound.

"The same expression 'shall be vested' occurs in other parts of the constitution in defining the powers of the other co-ordinate branches of the government. The first article declares that 'all legislative powers herein granted *shall be vested* in a Congress of the United States.' Will it be contended that the legislative power is not absolutely vested? That the words merely refer to some future act, and mean only that the legislative power may hereafter be vested? The second article declares that: 'The executive power *shall be vested* in a President of the U. States of America.' Could Congress vest it any other person?" A pregnant interrogatory to which I should wish to draw your Honor's attention. Can Congress withdraw a fraction of that Executive power and vest in any other person than the President? No! Can they then vest this power in any one? "Could Congress vest legislative power in any other person? or is it to await their good pleasure whether it is to vest at all? It is apparent that such a construction, in either case, would be utterly inadmissible. Why then is it entitled to a better support in reference to the judicial department? The constitution leaves nothing to discretion, in the distribution of these powers. If then it is a duty of Congress to vest the judicial power of the U. S. it is a duty to vest THE WHOLE *judicial power.*" The same reason would apply here. If Congress can take any portion of this power, they may take it all in a mass, and confer upon the State judges; because it is ALL vested in the U. S. judges. And therefore, because they cannot transfer it *all*, they cannot transfer *any portion.*

P. 330. "The next consideration is as to the courts in which the judicial power shall be vested. It is manifest that a Supreme Court must be established; but whether it be equally obligatory to establish inferior Courts, is a question of some difficulty. If Congress may lawfully omit to establish inferior Courts, it might follow that in some of the enumerated cases the judicial power could no where exist. The Supreme Court can have original jurisdiction in two classes of cases only, viz: in cases affecting Ambassadors, other public Ministers, and Consuls, and in cases in which a State is a party.—*Congress cannot vest* ANY PORTION *of the judicial power of the U. S. except in Courts ordained and established by itself;* and if, in any of these cases enumerated in the Constitution, the State Courts did not then possess jurisdiction, the appellate jurisdiction of the Supreme Court (admitting that it could act on State courts) could not reach those cases, and consequently the injunction of the Constitution that the judicial power *'shall be vested,'* would be disobeyed. It would seem therefore to follow that Congress are bound to create some Inferior courts in which to vest ALL that jurisdiction which, under the Constitution, is *exclusively* vested in the U. S., and of which the Supreme court cannot take original cognizance. They might establish one or more Inferior courts; they might parcel out the jurisdiction among such courts from time to time at their own pleasure; but the whole judicial power of the United States should be, at all times, vested either in an original or appellate form, in some courts created under its authority. This construction will be fortified by an attentive examination of the second section of the third article. The words are 'the judicial power *shall extend,*' &c. Much minute and elaborate criticism has been employed on these words. It has been argued that they are equivalent to the words *'may* extend,' and that 'extend' means to widen to new cases not before within the scope of the power. For the reasons which have been already stated, we are of opinion that the words are *used in an imperative sense.* They import an absolute grant of judicial power. They cannot have a relative signification to powers already granted, for the *American people had not made any previous grant.* The Constitution was for a new government, organized with new substantive powers, and not a mere supplementary charter, to a government already existing. The confederation was a compact between States; and its structure and powers were wholly unlike those of the national government. The Constitution was an act of the people of the United States to supersede the confederation, and not to be engrafted on it as a stock, through which it was to receive life and nourishment."

There follows then, several pages more of reasoning, one or two of which I will omit.

Page 333. "It being then established that the language of this clause is imperative, the next question is, as to the cases to which it shall apply. The answer is found in the Constitution itself. The judicial power shall extend to ALL the cases enumerated in the Constitution. As the mode is not limited, it may extend to all such cases *in any form* in which judicial power may be exercised. It may therefore extend to them in the shape of original, or appellate jurisdiction, or both; for there is nothing in the nature of the cases, which binds to the exercise of the one in preference to the other.

"In other cases (if any) *is this judicial power exclusive,* or exclusive at the election of Congress. It will be observed that there are two classes of cases enumerated in the Constitution between which a distinction seems to be drawn. THE FIRST CLASS *includes cases arising under the* CONSTITUTION, LAWS, *and Treaties of the U. S.;* cases affecting ambassadors, other public ministers and consuls and cases of admiralty and maritime jurisdiction. *In this class,* the expression is, that the judicial power shall extend to ALL CASES; but in the subsequent part of the clause which embraces all the other cases of National cognizance, and forms the second class, the word *all* is stopped, seemingly, *ex industria.* Here the judicial authority is to extend to controversies (not to *all* controversies) to which the U. S. shall be a party, &c.; from this difference of phraseology perhaps, a difference of constitutional intention may with propriety be inferred. It is hardly to be presumed that the variation of the language could have been accidental. It must have been the result of some determinate reason; and it is not very difficult to find a reason sufficient to support the approved change of intention. In respect to *the first class,* it may well have been the

intention of the framers of the Constitution, IMPARTIALLY *to extend the judicial power*, either in an original or appellate form, to ALL CASES; and in the latter class, to leave it to Congress to qualify the jurisdiction, original or appellate, in such manner as public policy might dictate.

"The vital importance of all the cases enumerated in the first class to the national sovereignty might warrant such a distinction. In the first place, as to cases arising under the constitution, laws and treaties of the United States. Here the State Courts could not ordinarily possess a direct jurisdiction. The jurisdiction over such cases could not exist in the State Courts previous to the adoption of the Constitution, *and it could not afterwards be directly conferred upon them;* for the Constitution directly requires the judicial power to be vested in Courts ordained and established by the United States. This class of cases would embrace *civil*, as well as criminal *jurisdiction*, and affect not only our internal policy, but our foreign relations. It would therefore be frivolous to restrain it in any manner whatsoever, inasmuch as it might hazard the national safety."

Then he goes on to remark about the second class of cases, with which we have at present no concern.

In the year 1816, then, the U. S. government had not the power to confer any particle, or fraction, however small, of judicial power upon any person, except Judges of the Supreme or Inferior courts constituted by themselves. They had not the power to give one particle of judicial authority to a state court or to any one else; and consequently, they had no power as we have said already, to confer upon state courts ANY AUTHORITY whatever. The United States have not a particle of power which is not executive, legislative, or judicial. Of neither of these three kinds of power can they vest one particle in the state courts of Georgia.

These magistrates undertake not merely to receive evidence in Georgia, but they go farther, and they control your Honor's mind and conscience, sitting here to try this case. They decide the competency of the evidence, and the effect of the record. If your Honor sees any thing which was incompetent evidence, but which was there admitted as evidence, still your Honor has no right to say any thing about the difficulty. We think there is incompetent evidence in this case, which comes certified by the Court of Georgia. But the act says we shall not argue the competency of that evidence. The evidence is competent only because the Court in Georgia certifies it. It must be conclusive on your Honor's mind, even though you absolutely know to the contrary, and though every person here should know to the contrary. Should even the master himself come here, and testify to the contrary, all that *ex parte* evidence in Georgia is binding upon your Honor, and upon all other Courts hereafter.

If this be not judicial power, to what class of powers does it belong? Are we not to use words according to their common acceptation, and should we not in the ordinary use of language speak of this as judicial action? And if we should, what is there, what criticism upon that language is there, which should give it a different construction in this case? I take it, if there be any one instrument in the world in which words are used according to their general understanding among mankind, and not according to any peculiar narrow, and merely technical meaning, it must be the constitution of the United States. It was made for a people distributed over a vast territory, for people of different States; and if words were used in a peculiar technical sense, it might be well understood by lawyers in one State, and not at all understood by lawyers, and still less by those who were not lawyers, in other parts of the Union. Words in this instrument are used in their universal sense, and the phrase JUDICIAL POWER was composed of words which any person understanding the English language could easily understand. So that no one could fairly give to them any other construction than the true one, by any exercise of ingenuity ——I will not qualify such an exercise of ingenuity, as I was about to do. But if such power be not judicial, to suppose it to be executive, or legislative, or mixed of these three, still leaves the whole force of my objection undiminished.

I pass to the next point, that such evidence is incompetent because the captive was not represented at the taking thereof, and had no opportunity for cross-examination.

I do not know as I shall argue this at much length, here, because I have already argued it, upon the subject of due process of law. A part of that due process of law is that exhibition of competent, and exclusion of incompetent evidence, which he has a right to demand. He also has his right to cross-examination. I have hardly had time to turn to those cases with which I am well acquainted; far less to search for any new ones. Twenty-four hours is rather a short time for the investigation of the principles which lie at the foundation of this case. I presume you can recall some very strong and indignant remarks of Mr. Justice Story, to the effect that a person should not have his property taken from him without giving him due notice to appear and defend. I allude to a case in admiralty, where a vessel was seized and condemned by a court in Mexico. [*Bradstreet and al.* vs. *Neptune Ins. Co.* III. Sumner, 608.] The party owning the vessel had no notice of it. And because he had no notice of it, and because it was like Star Chamber proceedings, Judge Story bursts out in honest indignation against it, as an outrage against the common civilization of the christian world. He applies remarks to Mexican justice, which I presume he might apply with equal force and justice to the Congress of the United States of America, if he were now alive, and could witness this prostration of all human rights and guarantees. He reprobates the action of the Court, in the absence of the party most affected by the decision of that court, and considers the parties to be plunderers and pirates under the shelter of judicial forms.

This very same action is had here by the inferior court of Georgia, under the provisions of this act. They do it according to this law, therefore we do not apply to them any epithets of censure. But all those epithets might properly be hurled against the law that authorized, that commanded a Court in Georgia to do, what it has been held infamous in England to do, since the days of the Star Chamber, giving no opportunity to confront, to cross-examine, to impeach, to be heard in public, to invoke the judgment of the country, or to be protected by any of those safeguards which the wisdom of the world has, at the cost of rivers of blood, for many generations, erected around the liberty of every subject, in the free nations of the Old World, and of every citizen in the New World.

The next point is the general unconstitutionality of the law. It is, that the statute under which the process is instituted is unconstitutional and void, because it is not within the powers granted to Congress by the Constitution, and because it is opposed to the express provisions thereof.

If the Court insist that I shall go on upon that point, I must try to do so, but really I have spoken longer than is usual in our courts, and if it is consistent with the nature of a summary process, I should hope that the gentlemen of the bar at least are not to be made slaves.

THE COMMISSIONER. I should hope that you would go on as far as you can.

MR. RANTOUL. I suppose it is no part of the in-

tention of this law, to make slaves of the members of the bar. And I feel that I should almost be made a slave, if I should be compelled to go on several hours longer to-day. I have been already engaged four hours to-day in arguing this case, besides spending from daylight in such preparation as I could make upon this sudden call.

THE COMMISSIONER. There remains of daylight nearly one hour yet.

MR. RANTOUL. I think the liberty of a citizen of Massachusetts, even if it be valued by some too low to deserve a jury trial, is of sufficient importance to be argued deliberately, and with time for a decent preparation. It is a mockery to allow him counsel, and incapacitate them to protect him by denying time to examine the books, or arrange their ideas.

THE COMMISSIONER. I must request you, Mr. Rantoul, to proceed as far as you are prepared. It will be remembered that you have the opening only, and that Mr. Loring has the close.

MR. LORING. I shall have but very little to say.

MR. RANTOUL. We have been driven on with so much urgency upon this case, that I have spoken the last two hours without being prepared. The counsel have had no time to consult together. I do not know what my colleague intends to say, nor is my colleague aware of what I intend to say. I do not know whether he approves of it or not.

THE COMMISSIONER. Can you give me, Mr Loring, an idea of what you intend to argue?

MR. LORING. My remarks will be principally on the subject of extradition. The doctrine of the opposite counsel is, that slaves are not parties to the constitution, and to that I intend to address myself. The other point to which I shall allude is this. It is said that the law is not unconstitutional because it refers only to slaves. If that be the true view of the case, it cannot refer to a freeman as this man claims to be. I hope the gentleman will favor us with the points he intends to touch upon.

MR. THOMAS. I shall be willing to give my references.

MR. LORING. I do not wish for the references, but only the points. The argument of Mr. Rantoul is upon the jurisdiction of the Court; and it seems to me that upon that we should have the opening and the close.

THE COMMISSIONER. I do not perceive that it can be very material which side closes the case.—Though in the form in which it has been heard, the claimant is entitled to be heard upon these questions of law, as well as upon any questions of fact. This question is raised by you of the unconstitutionality of the law. As far as there is any presumption, the presumption is that the law is constitutional. It is for you to show that it is not, and you are now engaged in that argument.

MR. LORING. On that question we have the affirmative, and therefore we should have the opening and close. But on the evidence the claimant's counsel should have the opening and the close.

MR. THOMAS. If at the opening of the case, the gentleman had admitted the facts which we undertook to prove, then they would have had the right to close; but otherwise not.

THE COMMISSIONER. Have you any objection, Mr. Thomas, to their closing upon this point?

MR. THOMAS. I think it is a question of law rising out of the case. Therefore, I think I ought to have the close.

THE COMMISSIONER. If that is the case, the claimant's counsel must have the close.

MR. THOMAS. I shall be glad to give the gentlemen the authorities to which I shall refer.

MR. LORING. We do not wish your authorities. We wish only the points you intend to make.

THE COMMISSIONER. I think it but fair that Mr. Thomas should give his points to Mr. Loring. Mr. Rantoul, do you reside out of town?

MR. RANTOUL. I do; at Beverly.

THE COMMISSIONER. What is the earliest hour at which you can be here to-morrow morning?

MR. RANTOUL. I can be here at 8½ o'clock.

THE COMMISSIONER. We will then adjourn to half past eight o'clock to-morrow morning.

TUESDAY MORNING, April 8.

MR. RANTOUL *continues*. The remaining point which we had the honor to submit on Saturday, and which I now propose to argue, is in these words: That the Statute under which the process is instituted, is unconstitutional, as it is not within the powers granted to Congress by the Constitution, and because it is opposed to the express provisions of the Constitution.

The government of the United States, it is almost unnecessary to repeat, is a government of limited powers. It is, in its nature, entirely unlike the governments of the several states. It is limited to specially granted powers. The Legislature of the State of Massachusetts may do whatever it may see fit to do, if it is not forbidden; and that, I believe, is the case with the Constitutions of most of the states. I will quote from the Constitution of Massachusets, Part 2d, Chap. i, § i, Art. 4. "And farther, full power and authority are hereby given and granted to the said General Court from time to time to make, ordain, and establish all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without, *so as the same be not repugnant* or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof."

Then they may make all manner of laws which are not forbidden to them in the Constitution. That I quote merely to show the sort of Constitution which prevails in most of the states, and I use it for the purpose of contrast. The United States Government, instead of possessing general grants of power, subject to limitation, is a government of special grants of power, which are laid down in the Constitution. That was the original understanding of the framers of the Constitution. That is the understanding now of the judicial authorities. That is the understanding under which the several states agreed to adopt and obey the Constitution. It is the doctrine to which they adhered, and meant to adhere. It is the doctrine of Massachusetts to-day. In the 4th article of the Bill of Rights of Massachusetts, we find,—

"The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state; and do, and *forever hereafter shall*, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter be by them EXPRESSLY delegated to the United States of America in Congress assembled."

The people of Massachusetts, then, in the year 1780, in a bill of rights drawn principally by Samuel Adams, declared their intention forever to enjoy every right which they might not EXPRESSLY delegate to the United States of America in Congress assembled. That was the intention of the people of Massachusetts. Have they ever departed from that intention? Have they ever shown any wish to grant any more power than that expressly granted to Congress? I maintain that the State of Massachusetts has always held that it was independent, except as to those powers which it had EXPRESSLY delegated to Congress. That is the Massachusetts doctrine. That is the doctrine that Samuel Adams wrote down. That is the doctrine that Massachusetts solemnly and emphatically incorporated into her Bill of Rights. That is the doctrine that stands, and "forever hereafter" shall stand in the Massa-

chusetts Bill of Rights. That being, then, the doctrine of Massachusetts, I ask your Honor to act up to that doctrine.

Congress shall have that power which is EXPRESSLY DELEGATED to them. Have they ever pretended to possess that which is not delegated? Never! On the contrary, they proceed always upon the supposition that the powers of the U. S. are created and defined by the Constitution, and that they have no other power. They proceed to distribute this power.

Constitution, Art. 1, § 1. "All legislative powers herein granted shall be vested in a Congress of the U. S., which shall consist of a Senate and House of Representatives."

Art. 2, § 1. "The Executive power shall be vested in a President of the United States of America."

Art. 3, § 1. "The judicial power of the U. S. shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Are there any other powers except these legislative, executive and judicial powers vested in other persons? None! Nothing is taken by implication; because if you begin to take by implication, you know not where you may end. Nothing is to be taken by implication, because the men who framed this constitution knew what they were doing. They knew they were creating a government of limited powers. Powers were proposed and rejected, because it was not intended that they should be inserted. Whatever was meant was written. This is the letter of attorney of Congress; and whatever is not in the Commission they cannot usurp or assume.

I come now to consider, — if it were not that it is unnecessary, I should run over the general doctrines of the Constitution, and show that this general rule of limitation of power runs through the whole of it,—I come now to the consideration of the 4th article of the Constitution.

Art. 4, § 1. "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

Do those words contain a grant of power? Is there a grant of power, it being considered that every grant of power in this Constitution is a grant of something which the people possessed, and distinctly and expressly transferred from themselves to the U. S.? A grant of power must be expressed, from the nature of the transaction itself. A State possesses and retains all the powers of government which are not prohibited to it. The U. S. possesses only those powers which are granted. If you contend that those powers have gone some where else than to the States, show me how, and when, and where. How have they been granted, if the grants do not appear by the letter of the Constitution? If you cannot show that letter, then the plain truth is, that the powers do not exist at all in the U. S. For if they do exist, it is only through this Constitution. Such was the view with which the people of the U. S. adopted and confirmed this instrument. For they have given in the amendments, as emphatically as words can give, their sanction to the rule of interpretation which I have indicated.

Amendments to the Constitution. Art. 10. "The powers not delegated to the U. S. by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

I hold that a delegation of power must be an express delegation. Here the Constitution says, that the powers not delegated are reserved. Here is this general reservation of all powers not delegated. Now I hold that that makes it necessary that the delegation should be clear; because here is the obvious intention to retain all powers not delegated. Why was this amendment inserted? Because certain grants of powers were given, and it was feared others might be taken by implication. It was put in from greater caution; from excess of caution. It was put in to render it certain that no man could pretend that the United States had any power not given in the Constitution. That is what they meant, or else it would have been unnecessary so to amend; and yet so necessary was it regarded by one of the great sages of the Revolution, Thomas Jefferson, a man whose Constitutional opinions were so much approved by the people that they twice elected him President under this Constitution, that he, speaking of this tenth article, which means nothing at all, unless it meant to say, you must expressly ascertain that the power is there, in so many words, or else it does not exist, said in his official opinion, as Sec'y of State, "I consider the foundation corner stone of the Constitution of the U. S. to be laid upon the 10th article of the amendments." It will not do when a great apostle of human liberty has declared this article to be the corner stone, the foundation upon which the whole structure rests—it will not do to say that it means nothing. It was put there to show the intention to reserve all power, which was not necessarily, by the strictest construction, granted to the government of the United States.

Now I come back to the 4th article of the Constitution; and I ask, after these remarks, whether the words which I have read do contain a grant of power. "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State." That declares that something *shall be done*, that it shall be done too *in every State*, and that something *must be done by the State*. Full faith shall be given in each State. Is that a grant of power to Congress to regulate how "full faith shall be given?" It certainly is not from the principles which I have laid down. It is certain that it is not, from that which follows. If the framers of the Constitution had supposed that the first clause did grant the power, then they would not have gone further and given the power in so many words; because here is an instrument where there are no words wasted. And when they say that "Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof," they did so, because they knew Congress could not otherwise have touched this subject. If the first clause only had been used, then Congress could have done nothing in the premises. The prohibition, or command, call it which you please, was directly to the States. Then it goes on to say that *Congress may regulate;* that gives the power to Congress.

I pass to the second section. I have made these observations for the purpose of applying the principle for which I am contending, to the second section.

Art. 4. § 2, par. 1. "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

Is that a grant of power to Congress? The citizens of each state shall have the privileges of citizens in the several states. Well, that is a direction to the states, and to nobody else. It does not authorize Congress to act, and yet here is a case where Congress might act, if the states had chosen to give them the power. Suppose this man is declared free; and suppose this man ships as a steward on board of one of our merchant vessels, and goes to Charleston, South Carolina. There he is taken out of the vessel by the authorities, and imprisoned during the stay of the vessel. And if his jail fees are not then paid, he is sold as a slave.—The State disobeys this positive command; and Congress has not determined that it has the power to act. And most certain it is, that if the pre-

tence were set up that Congress had a right to legislate on this subject, it would be asked with great pertinency, "If the framers of the Constitution meant so, why did they not say so, as they did in the first section?" Congress has no such power. If it has, where is it given? It is replied, "it is declared in the second section, that the citizens shall have the privileges of citizenship throughout the U. S." "Oh!" the answer would come, "that is a direction to the States. Where is the grant of power to Congress? No! no! it is not at all like the first section. There, full faith was to be given to the proceedings of other States, *and Congress has the power by express enactment* to control it. In the case of the second section, however, Congress has no such power; for if it was intended that it should have the power, that power would have been conferred in express terms." If this argument could have been answered, some one would long since have proposed an act protecting the citizens of each State in every other State, it would have been passed, and it would have been sustained by judicial decisions, and enforced. But that has not been the case, because the power was not given to Congress. Well, then, I come to the other clauses of the same Section.

Art. 4, § 2, par. 2. "A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

Any grant of power to Congress there? Not unless there was in the first clause of the first section. But yet in the first section they thought it necessary to express the grant, and here not. It is not a clause which in its nature necessarily implies that it must be executed by Congress, because it can be executed by the States. If it had said something shall be done, and that something was that, which in its nature could be done only by the U. S. government, which was impossible in its nature to be done by the States, then it could be said that it was absurd to pretend that it must be done by the States. But in this case it can be done by the States. It is now done by the States, although regulated by a federal law. It can be done by virtue of a state law, just as well as by Congress. The state of Massachusetts might have made regulations to give up fugitives from justice just as well as Congress. It would have been for the mutual interest of the States of this Union to make laws for the delivery of fugitives from justice. It would have been done just as certainly, and just as well by States, as by Congress. Not only is this power not given to Congress in words, but it is a power which might with equal propriety be given to either the state, or the national government; and the constitution has declared that that which is not given to the general government is reserved to the States.

THE COMMISSIONER. I do not like to interrupt you, but I wish to understand you. I wish to ask if your argument goes so far as to maintain that Congress has not the power to carry out that section?

MR. RANTOUL. It does. I know that Congress have legislated on this subject. But I maintain that the power is not granted. Then comes the next clause. The ground that I have taken may be defended by stronger arguments with regard to this clause, than with regard to the clause concerning fugitives from justice; so that a judge with nice distinctions might decide that Congress could pass laws with reference to the first, and not with reference to the second. The objection is stronger in regard to the latter.

Art. 4, Sec. 2, par. 3. "No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due."

Now, I say, here is no grant of power, which is the same remark I made with regard to the last clause. But I go further with regard to this, and say that there are words here to show that the reference is made directly to the States. And the words are these: "No person held to service or labor in *one State*, under the laws thereof, escaping into *another*, shall in consequence of any law or regulation THEREIN, be discharged from such service or labor." There is a prohibition directed to the States. You shall not undertake by your laws to discharge a fugitive from labor.

The prohibition is from its nature as well as its form, directed to the States, and cannot be directed to anybody else. The prohibition is to the States clearly upon the face of it; and although a judge might think my argument not of sufficient force in regard to the former clause, yet here the argument is stronger. Here is not only no grant of power, it is not only a power which States can exercise as easily as the general government, (you may think that the general government would do it better, and I might think it might do it worse, which would be a matter of opinion;) but the fact that the Constitution does not give the power to Congress shows that it must remain with the States; and then comes the direct prohibition to the States. Then if that prohibition is directed to the States, what follows? "But shall be delivered up!" *Delivered up?* By whom? By the party that is prohibited! *The State* is commanded not to discharge, and *the State* is commanded to deliver up. If the Constitution meant that Congress should exercise the power, they would have said so. If they meant to have Congress and the States act on this subject, concurrent power would have been given. This, then, is a grant of power solely to the States, or solely to the general government; and as I cannot find the grant to the general government, as this clause stands precisely as the first clause in the first section would, without the power, unless it is given, I must come to the conclusion that the power is retained in the States exclusively. Here, both the prohibition and the command are addressed to the State. And I am induced to think that this is the view the State of Georgia will ultimately take of the subject, consistently with that system of doctrine which she has always advanced, and with that jealousy which she has always manifested with regard to the increase of federal power. Consistently with that view which they have long maintained, they cannot take the latitudinarian construction. And sure I am that the State of South Carolina would necessarily take this view of it, or else strangely depart from her most cherished principles. I do not urge this as authority for your Honor to act on. I simply bring forward that fact, if it be a fact, that supposition if it be only a supposition, in order to remind your Honor that there is not a general ascertained consent of the people of the United States to any contrary doctrine.

It is not certain that the people of the slaveholding States, as a general thing, will hold this law Constitutional, on the ground on which I am now speaking. Many of their statesmen have declared that it is one of the greatest encroachments of the federal power. Senators from the South have agreed in this. The Hon. Jefferson Davis, to mention no other name, contend that it was one of the greatest outrages upon the States, for Congress to exercise a power not granted in the Constitution, and he denies this power to be granted. And I undertake to say that that feeling is increasing, and likely to increase everywhere. For it is most important to proceed upon sound principles, and people in a great crisis go back to sound principles.

These, then, are the reasons why I say that this law is unconstitutional.

There is no grant of power to enact it. It cannot be enacted without such a grant. I then go further and say, which is a mere recapitulation, that this law is unconstitutional, because it is in violation of express provisions of this Constitution. And those I have already argued. They are that judicial power shall be exercised only by judges; that in suits at common law, where the value in controversy is more than twenty dollars, the right of trial by jury shall be preserved. There are various other propositions which bear upon the subject, such as that a party shall not be deprived of his life, liberty or property, without due process of law. And due process of law includes trial by jury and an impartial hearing with confronting of witnesses. Liberty is of more value, most certainly, than the sum of money limiting jury trials, or than any other conceivable sum of money.

I say that this act is void, because it contravenes express provisions of the Constitution of the United States. The Constitution of the United States knows but three kinds of power: Legislative, Executive, and Judicial. The executive power cannot be entrusted to anybody else than the President, although he may employ instruments. The legislative power cannot be entrusted to anybody else than the Legislature. The judicial power cannot be entrusted to anybody else than the Judges. And the Constitution does not pretend or undertake to do otherwise.

Now you might as well say that Congress could entrust to the Executive a portion of the judicial power, or to the Judges a portion of the executive power, or to either of them a portion of the legislative power, as to say that persons who are not of the judiciary, shall exercise judicial power. The power under which your Honor is asked to act must be one of these three powers. Is it a legislative power? Certainly not! Is it executive power? Certainly not! If your Honor is merely acting as the instrument of the government, in accordance with acts which are constitutional, we should be glad to know it. But in this case the decision of the controversy is an act of judicial power, and not an act of executive power. Then your Honor must sit under the authority of the judicial power.

All executive power is vested in the President. Is your Honor acting by his orders? If so, we should be glad to know it. Is your Honor acting by virtue of any decree in the United States Court? No, again! What is it that your Honor is doing? Trying a case, and nothing else! Why, what I read from Lord Coke, quoted from Virgil, about the court below, where his Honor, Judge Rhadamanthus, first punished, and then heard, was a slander upon that court. It is not so. The latest reporter concerning that court (*Dante Allighieri,*) has given a different account of the judgment rendered by Judge Minos, having concurrent jurisdiction with Rhadamanthus. He tells us:—

"*Dicono e odono, e poi son giu volte.*"

They speak, and hear, and *then* are whirled below.

Now, in this case, is your Honor hearing a case as they are heard in all courts on earth, and under the earth, a case which is to be decided on judicial principles, or is your Honor acting as an executive officer? in which latter case, all the questions both of fact and of law would seem to be raised and heard to little purpose. I suppose that the argument I am making is addressed to the judicial mind of the officer, and that his action on it is a judicial action. If it be a judicial act, where does your Honor get the authority for it? Your Honor gets it, if at all, from that part of the Constitution from which the other judicial power comes. And no fraction of that can be given to any one except a judge. And is not your Honor doing a judicial act, without the functions of a judge? Are you not doing such an act, when you hear, weigh, and decide upon an argument upon the constitutionality of an act of Congress? Aye, decide without appeal!

There is no escape from this conclusion, for there are but three classes of power in the Constitution. Is your Honor to suppose that this preliminary examination, held by an executive officer, is merely to send a man somewhere else where the same question may be tried? Does your Honor suppose that THE ESCAPE of this man is to be tried anywhere else? If your Honor remands him to Georgia, it puts him in the situation of a man already adjudged to be a slave. He is tried by a different law there, from what he is here. The fact that he is a colored man does not make a presumption against him, here, that he is a slave. In Georgia, the presumption of fact and the presumption of law are, that he is a slave. You send this man from the place where the presumption of law and the presumption of fact are that he is free; and you send him back to Georgia, where there are two presumptions, the one of law, and the other of fact, which close his mouth upon this question. The fact of HIS ESCAPE is settled here. Nor do I know that there is any law of Georgia which would make him free, if he had been carried by force from that state to this; or if that be law in Georgia, it does not appear that it is so in all other states. Or even if it be law in all the states of the Union, that law may be changed in any of the states, at any time. Therefore your Honor may be *finally deciding* questions of law as against all possible remedies. Are not these acts judicial?

Why, the court below, that I spoke of, might be said to be going through a preparatory process, for the convicts await final judgment. We do not know that this man will have another judgment in this world. He may have one on different principles, in the world to come.

There are several things that I had intended to say yesterday upon the other points raised, as to where this contravenes positive provisions of the Constitution. But I forbear to urge them. When the court intimated that twenty-four hours were sufficient to prepare for this debate, it was an intimation to the counsel that no very wide range of debate would be allowed to be taken.

Before sitting down, I would ask whether the court wishes to have these points decided before anything additional is introduced, or whether it prefers to hear points which may arise upon the evidence first.

THE COMMISSIONER. The whole case must be argued now.

MR. RANTOUL. I will argue then one point upon the case: there are several that arise. That seems to me the most important which I will state, that the power of attorney under which the claimant claims to act here, is not such a power of attorney as is provided for under the statute, and that therefore no person has authority to claim this colored person as held to service.

The power of attorney is provided for in the 6th Section, which enacts "that when a person held to service or labor in any state or territory of the United States has heretofore, or shall hereafter escape into another state or territory of the United States, the person or persons to whom such service or labor may be due, or his heirs or their agent or attorney, duly authorized by power of attorney, in writing, *acknowledged and certified under the seal of some legal officer or court* of the state or territory in which the same may be executed, may pursue and reclaim such fugitive person."

Under that clause, the agent or attorney of Mr. James Potter, who claims to own this colored person, comes and makes the claim, and if the power of attorney is not sufficient to authorize him, there is no case before your Honor. Has he brought such a power as is contemplated by these words?

The power of attorney must be in writing, acknowledged, and certified, under the seal of some legal officer or court of the state or territory. This power of attorney is in writing—it is acknowledged—but it is under the seal of a notary public. The acknowledgment is :

"Be it known, that on the day of the date hereof, before one Robert M. Charlton, a public notary in and for the county and state aforesaid, [Chatham Co. state of Georgia,] &c., in testimony whereof I have hereunto set my hand, and affixed my notarial seal, this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and fifty-one. ROBERT M. CHARLTON,
Notary Public."

Then follows a certificate that he is a notary public in Georgia, which fact we do not doubt.

THE COMMISSIONER. Under what authority is the last?

MR. RANTOUL. Under the authority of the clerk of the inferior court in Chatham County!

MR. THOMAS. Pray state the whole that he certifies, that this notary public is appointed according to the laws of Georgia to certify.

MR. RANTOUL. There arises, then, the question; whether this clerk has a right to certify as to what may not be true. I will read.

State of Georgia, Chatham County.

"I, John F. Guilmartin, clerk of the inferior court of Chatham county, in the said state of Georgia, do hereby certify, that Robert M. Charlton, Esq., whose signature appears above, and which is recognized by me as genuine, is a public notary of the county of Chatham aforesaid, duly appointed by the inferior court of said county, and commissioned and sworn, and residing in the city of Savannah, in said county of Chatham; and I further certify that said Robert M. Charlton, as such notary public, is authorized by the laws of the state of Georgia, to take the acknowledgment of deeds or other instruments in writing, executed in the county of Chatham and state of Georgia aforesaid;—and that his said attestation above written, is in due form of law. In witness whereof, I have hereunto set my official signature, and the seal of said inferior court, this twenty-seventh day of March, A. D. 1851.
JOHN F. GUILMARTIN,
Clerk, Inferior C. C. P."

Now he certifies that the attestation is in due form of law; that is, simply, that it is formal; that he has the right to take the acknowledgment of deeds or other instruments in writing. He does not certify that power is broad enough to include that precise power which he exercises. In other words, he does not undertake to certify with regard to his authority for the precise act which he does. But he does certify with regard to deeds and other instruments in writing. Does he mean to include all instruments, which may not be in accordance with the laws of Georgia? No! he does not specifically include this case. No! he must certify that the notary public had the right in this case, if that is a reasonable construction of his words, and I think it is.

THE COMMISSIONER. Am I to understand that a notary public is not a legal officer within the contemplation of the act?

MR. RANTOUL. Yes sir! He would not seem to be such a person at first sight. He is appointed to note the protest of notes; to note the protest of damage sustained by ships. But he is not what is generally meant by "a legal officer." The words "legal officer" I think, mean an officer competent to do this act! "Certified by a legal officer!" That is, an officer within whose powers such acts are included.

THE COMMISSIONER. Then whatever may be the powers of notaries public in general, if it appears that this particular notary public is authorized to take the acknowledgments of deeds and public instruments, does that, or does it not confer on him power?

MR. RANTOUL. In the first place I assume that a Notary Public in general is not authorized to certify powers of attorney. Of that there will be no doubt. In the next place, I take the ground, that if in Georgia he is not authorized to do this very act, then he is not a legal officer in the contemplation of this law. It so happens, that in Georgia, Notaries Public do have more power than elsewhere. But a Notary Public does not have this power even in that State, by Georgia law. It was not competent for him to certify to this paper by Georgia law. Notaries Public in Georgia are appointed in this manner. I read from the laws of Georgia, Vol. 3, p. 1072.

"*An act to vest the appointment of Commissioners of Academies, vendue masters, Notaries Public, and lumber measurers, in certain persons therein mentioned. Approved Dec.* 18, 1816.

"Whereas the present mode of appointing the aforesaid officers is very inconvenient, and occasions an unnecessary consumption of the time of the Legislature,

"*Be it enacted, &c.* That from and after the passing of this Act the appointment of Commissioners of Academies in this State, shall be and is hereby vested in the Commissioners of the respective academies.

"The appointment of vendue masters, Notaries Public, and lumber measurers, shall be and is hereby vested in the Commissioners of the respective incorporated towns, or the persons in said towns in whom the corporate powers are vested: and where there is no corporation or Commissioners, the appointment of the said vendue masters, Notaries Public and lumber measurers shall be made by the inferior Courts of the respective Counties, whenever such officers are deemed necessary and authorized by law." Prince's Dig. of the Laws of Georgia, p. 179.

That is the mode in which he gets his appointment. He is appointed by the Commissioners of the town, if there be any; and if there be not, then by the inferior Courts of the County. And here it appears that he was appointed by the inferior Court of the County and not the Commissioners. Now, the law says he shall be appointed by the Commissioners, if there be any. The County Court had no power to act in the premises, if there were Commissioners. And it seems there were Commissioners. What is the power of this Notary Public with this irregularity in his appointment, with regard to deeds and the acknowledgment of deeds? I read from the 7th Sec. of an act approved Dec. 26, 1827. Vol. 4, p. 221.

"All *deeds of land* which may have been recorded on the oath of one or more of the subscribing witnesses, or if subscribed by two or more witnesses, one of whom attested the same as a judge of the Superior Court, justice of the inferior Court, justice of the peace, or Notary Public, shall have been recorded in their official attestation; such deeds, though not recorded within the time prescribed by law, shall be admitted as evidence in the same manner as deeds which have been duly recorded." Prince's Dig. of the Laws of Georgia, p. 166.

A Notary Public in certain cases has power to attest *a deed of land* recorded on the oath of two or more subscribing witnesses, one of whom is a Notary Public; but he has not the power to attest any other deed under the laws of Georgia. Upon the most careful search that we have been able to make, we cannot find that he has the power to attest any deed, *except deeds of land*. Now counsel bring us this instrument and say that is good under the laws of Georgia. If it is so, we desire to have it shown. The act of Congress does not make it so. It says *a legal officer* or Court. He is not

a Court evidently. He is not a legal officer, unless he is made so by the law of Georgia. For the general powers which Notaries Public exercise under the general law of Europe, and of this country, do not include this Power. Where is the Statute law of Georgia, granting this power? It is for the gentleman to give it. We have searched and do not find it. And so far as we are informed (I speak in this way because we cannot pretend to know the laws of Georgia as well as those of our own State,) the power to do this act is not granted to Notaries Public under the laws of that State.

THE COMMISSIONER. Then does it not stand on the certificate of the Court that he had power?

MR. RANTOUL. Suppose your Honor knew that he had not?

THE COMMISSIONER. I am not to presume that he had not.

MR. RANTOUL. Does the act make the evidence of the Clerk of the Court conclusive as to who shall exercise this power? I had not found that strange thing in this strange act, though I have found many other strange things.

MR. THOMAS. It makes it all the way through under the seal of the Court.

MR. RANTOUL. I do not know what you mean by all the way through. It says when it shall be proved by satisfactory testimony that such person owes service or labor, he shall "be taken forthwith before such court, judge or commissioner, whose duty it shall be to hear and determine," &c. And then, "or by other satisfactory testimony duly taken and certified by some magistrate, justice of the peace or other legal officer authorized to administer an oath and take depositions under the laws of the state or territory from which such person owing service or labor may have escaped, with a certificate of such magistracy or other authority as aforesaid, with the seal of the proper court or officer thereto attached, which seal shall be sufficient to establish the competency of the proof."

MR. THOMAS. *The competency of the proof!*

MR. RANTOUL. Yes! The competency of the proof that he was held to service, not that the claimant's attorney is legally appointed.

MR. THOMAS. There is no separation between the two.

MR. RANTOUL. It is the satisfactory proof that the man was held to service. That is the satisfactory proof that is afterwards referred to. Now is your Honor going to jump from one of these to another, and because this act has made provisions of certain kinds of proof for certain facts, will your Honor come to the conclusion that certain other facts, which it does not include, are to be proved by implication? If your Honor does make that decision, I shall be more suprised than at anything which has occurred during this trial. There is nothing in this act by which a certificate shall determine who is a proper officer. That being so, your Honor is bound to decide it on that point, as if this law did not exist. In other cases than this, how would your Honor proceed concerning the admission of such testimony? Your Honor would say, "Show us the laws of Georgia which authorize this. We cannot depend for those laws on the mere assertion of a clerk of the court." We have examined the laws of Georgia, and do not find any thing of the kind.

THE COMMISSIONER. Will you give me the points you make, in writing, in the language in which you submitted them?

MR. RANTOUL. I will do so.

CLOSING ARGUMENT

OF CHARLES G. LORING, ESQ.

BOSTON, APRIL 8, 1851.

It must be, Sir, a matter of as much regret to the Court as to the Counsel, that so little time has been had for preparation in a case of this magnitude. Had I been applied to in a civil suit, relating to property of any moment, involving an inquiry of so much intricacy and extent as this, I certainly should have declined being retained. And even in this, if the delay in requesting me to serve had been owing to the fault of the prisoner, I should have felt justified in declining for that reason. But being called upon in behalf of a man arrested at midnight, and to be tried the next morning at nine o'clock, with my views of professional duty, and feeling that he had a right to call upon those who had some experience in the profession, and who therefore might be presumed to be better qualified for sudden service than younger men, I had no right to hesitate. And I am here, Sir, at his request, communicated to me to act as his counsel after the barricades had been erected around the court house, and within five minutes of the time I appeared before this tribunal. You were then informed that I should be obliged to be absent from town on the succeeding day, in consequence of a previous engagement. I was so absent during the whole of Saturday. On Monday nearly my whole time was passed in attendance in Court in this case, and thus you may judge how very slight has been the opportunity for preparation to argue such a question as this.

I feel that this is a case of vast importance, involving the first principles of civil liberty and personal security under the laws and Constitution of the United States, and the Constitution and laws of the Commonwealth. It is nothing else than a question of personal liberty between a man claiming to be a freeman, and another man claiming to seize and carry him away as his bound slave. That is the question.

The magnitude of such a question can alone account for the profound excitement which pervades a large portion of our community, and the intense anxiety manifested in regard to the administration of the notorious law now under consideration. For however much they may be attributed to designs and efforts to produce political effect, in which I disclaim all participation, however needless such disclaimer may be to you, still such an extensive and deep felt sympathy and intense excitement as do exist, could not be aroused but by the belief that the fundamental rights of human liberty are involved in the issue.

Such, Sir, is my own deep conviction. And although deprecating violent measures taken any where by opponents of this law, and utterly

opposed, as I am and ever shall be, to every thing tending to forcible resistance of the officers employed in its execution, believing that calm discussion, with resolute determination to use all lawful means for its modification or repeal, are the only proper means of procuring relief from the suffering and disgrace it inflicts upon us, I nevertheless am profoundly convinced that the law as here attempted to be enforced by you, is a most dangerous encroachment upon the letter and spirit of the Constitution, and upon the fundamental principles of human freedom and social security.

I use this language deliberately, with much consideration of what it means. I hold that voluntary acquiescence in the continuance or enforcement of this law would be dangerous to civil liberty. Such a law acquiesced in, apart from the wrong that may be done in any individual case under which its discussion may arise, becomes a precedent and authority for the principles it involves; aud its unconstitutionality therefore cannot be too urgently pressed upon any judicial tribunal called upon to take cognizance of it.

There is another view which renders the decision of the questions arising under this law practically of great moment, and that is its immediate *practical* bearing upon the *liberties* of a considerable number of our citizens, who are unquestionably freemen, and citizens of this State, and entitled to the protection and immunities of the State as freemen, but whose liberties and rights are placed by it in daily extreme practical jeopardy.

It is well known to have been judicially settled in this Commonwealth, that if a master bring or send his slave into a free State, he is by that act made free, and cannot be reclaimed. That is the settled law of this Commonwealth, and, I believe, of all the free States. It is equally well known that a very considerable number of persons, who have left their masters and mistresses, under such circumstances in the free States,against their will, are now resident in the city of Boston and elsewhere, as free citizens of this State; and are very useful, very respectable, and I may say, by many persons sir, very much beloved, citizens of this Commonwealth.

It is also well known, sir, certainly to every professional man, that in some, if not in most of the slave States, this doctrine that a slave is made free by being carried into a free State and there leaving his master, is repudiated and denied. I am prepared with authorities upon that point if they are required. It is held by them to be in violation of the Constitution, and in derogation of the good faith of the free States which advance this doctrine. And all must remember the denunciatory tone of the papers of some of the Southern States, and particularly of those of South Carolina, when that doctrine was first promulgated by the Supreme Court of this State.

Now I submit to you, sir, that, practically speaking, it is an event not at all improbable, but very probable, that efforts will be made to recover some of the persons who are now thus residing among us, lawfully free men and free women. Their former owners feeling very strongly on this point, believing that they are injured and aggrieved at the loss of their slaves in this manner, very probably considering them guilty of great wrong, ingratitude and misconduct in such desertion, will think it right to attempt their recovery. They think that this State is unjustly and unlawfully protecting these persons to whose service they are entitled: that our decisions are erroneous, and that we are robbing them of property rightfully belonging to them. They therefore will feel no compunction in seeking their recovery.

I submit that it will be perfectly easy to obtain proofs of their identity and of their former servitude in the place of their abode as slaves. This is not merely practicable, but will require no effort. And it is just as easy to obtain proofs of their escape, by persons ignorant of the fact that their masters carried them into a free state, but who can testify to their previous service in the Southern state and to their subsequent absence, unaccounted for otherwise than by an escape; while some of those persons might have very little difficulty, and very little scruple of conscience, in obtaining other more direct proof.

THE COMMISSIONER. Are you not arguing with reference to persons brought voluntarily by their masters into a free state?

MR. LORING. I am.

THE COMMISSIONER. How could this law have any bearing upon them?

MR. LORING. That, sir, is what I am attempting to show to you. The former owner of a captive under this law has only to go before a magistrate in the slaveholding state, and produce testimony that a person of a certain name and description was a slave owing him service, and that he escaped from that state, without setting forth the manner of escape; giving such marks and numbers as shall prove that the person so described and alleged to have escaped, is the individual before you. A transcript of that testimony, with a certificate of the magistrate's satisfaction, with the proof therein contained, is sent here under his seal. The person before you is proved to be the same by further evidence of identity, if need be. And then that transcript becomes binding and conclusive upon you as certain proof that the captive does owe service to the claimant, and did escape. And you must abide by it and act upon it, and grant the warrant, although you may personally know that the master brought the captive into Pennsylvania or into this state voluntarily, and that therefore he is as much a freeman and entitled to the protection of the Commonwealth as you are. That record is conclusive proof of the slavery and the escape, which you are not at liberty to resist or question. It is in vain that you know that the owner had thus set him free, that record that he did owe service, and did escape, certified there by the magistrate, is conclusive upon you.

THE COMMISSIONER. That supposes perjury.

MR. LORING. No perjury at all, sir! A witness may truly swear that the prisoner owed service as he truly once did according to their laws. Another man may swear that he escaped because he is gone, and he is ignorant how he became absent, knows that his master claims him, and really believes that he has escaped. And yet you may know that the master brought him. I am told that a case of that kind has actually occurred. I know that this places this law in a new light. But I appeal to you, sir, as a man and a magistrate, that it is so. Suppose that in this very case, this master had permitted this man to come here of his own accord. Yet the evidence is binding upon you that he escaped. It is easy to obtain honest witnesses really believing that the escape has occurred, to say nothing of the ease of obtaining testimony of mercenary witnesses on such occasions. And it is only necessary to prove all this by testimony taken there *ex parte*, in remote places and of persons wholly unknown elsewhere, and which must be conclusive. Thus the liberties of a considerable and very worthy class of our citizens are jeoparded; and they are now suffering in trembling anxiety from this apprehension.

If this law is constitutional and they can be made the subjects of its grasp in this form of proceeding, then I say that all these people who have thus been slaves, and have thus been made voluntarily free by their owners, may become the victims of proceedings like this. Not one of them sleeps securely a single night. And although they are entitled to our protection and support as freemen under the

laws of this Commonwealth, they may at any time, by summary process, within a few hours or minutes, be hurried away into immediate, endless, and hopeless bondage; for should they succeed in obtaining a trial in the state to which they may be carried, they may be adjudged slaves under its law, though unquestionably free here. Sir, I say it with sorrow, but I say it with the deepest conviction, that if this law is constitutional, and shall be so judicially held by the Supreme Court of the United States, and I wish it could be there decided, then it will and must be a source of endless agitation until a repeal or modification takes place; not that I would have it so, but it must be so. It is so adverse to all our ideas of constitutional liberty, of legal protection by due process of law, and of the right of trial by jury, and so totally destructive of the liberty and security of any one who may be seized under it, although actually a free man, that it cannot be, in the nature of things, submissively and quietly acquiesced in, without a struggle for its modification or repeal. To say nothing of its other odious and oppressive features, which would lead one to believe that the aim of its projectors, I do not mean of those who voted for it, but of those who made it, was to make it as hateful as possible to the Free States, in order to test their forbearance and humiliation to the utmost extremity. I feel assured that the existence of such a law can only be accounted for by the consideration that many of those who voted for it, were not aware of the nature of its provisions and the consequences to which they led. Its whole features were not seen at the time. Those who voted for it never dreamed that they were passing such a law as this.

Sir, I cannot approach the brief discussion I propose of the positions relied upon by the claimant in support of the constitutionality of this law, without referring to the enormous power vested in you who confessedly act under it merely as a ministerial officer, and without judicial power or responsibility. My personal friendship forbids me to compliment you. But I will say, that there is no man in the Commonwealth before whom as a Commissioner, I would prefer to have this case brought; yet I cannot forbear to argue in plain language.

If I understand this case, and if I understand your sagacious suggestions during the argument of my colleague, and in the discussions of this trial, the whole ground of your authority rests upon the construction put upon this law that it is merely a preliminary procedure in the nature of an extradition, and not an adjudication of the rights of the parties in contestation. You have already pronounced this to be your decision, and I suppose it to be your only ground, for if it is a suit at law, then you are too much of a lawyer not to know that it would be unconstitutional for a Commissioner to sit in judgment upon it.

THE COMMISSIONER. I do not know as I have said that that was my ground solely and decidedly.

MR. LORING. Not solely, but decidedly. Your Honor does not undertake to pass judgment upon the rights of these parties.

THE COMMISSIONER. I undertake to pass judgment sufficient to pass the prisoner from this Commonwealth, but for a specific purpose.

MR. LORING. For extradition, merely?

THE COMMISSIONER. My view of it is this: That here is a judicial inquiry, in its nature judicial, because the mind of the officer who has to grant the certificate must be satisfied upon proofs that it ought to be granted; that there is an inquiry directed to be made; and that upon the result of that inquiry being shown to be in favor of the claimant, the aid of the executive power of the United States is ordered by Congress to take the party claimed away. Now the argument which objects to the exercise of such power as being judicial power, and not vested, and not being capable of being vested in any body but judges appointed by the President, and upon stated salaries, &c., must go to this, that there is no class of judicial inquiries that can be exercised, or directed by Congress to be exercised, partaking of the nature of judicial inquiries, whether of this nature or of any other, but what must be conducted by judges. That must be the extent to which the argument must go.

MR. LORING. The argument need not go to that extent, because we maintain that the powers you claim to exercise here, transcend those that can be exercised by any ministerial officer; not that there may not be some powers of a subordinate judicial character that may be subject to revision by the superior judicial tribunal. But I am not at this moment considering the nature and extent of those powers, but your right finally to decide upon them. You claim to exercise here powers for the extradition of this fugitive. Upon that hypothesis alone, can you claim to decide or pass upon any question here raised. Now standing here as counsel of the prisoner who claims to be free, with all due respect for the tribunal before which I stand, I do deny that to be the true construction of this law. I deny that the powers you are called upon to exercise are merely in the nature of judicial powers for the purpose of extradition of this fugitive. I maintain, and with perfect confidence, that it is not a preliminary procedure in the nature of extradition —a summary process merely, but that it is directly the reverse; that it is a final adjudication of the present rights of those parties, and settles those rights finally; settles them at least for a certain period of time.

I shall submit, sir, before I get through with this case, reasons which I think justify me in saying that however I may have the misfortune to differ from your Honor, no confidence that you can entertain that your opinion is right, can exceed the confidence that I entertain in my own.

Here is a great question of law, upon which this whole case hangs; a question of construction of a statute, upon which your right of jurisdiction wholly depends. If you are wrong in that question, you have no jurisdiction. If you are right, you have jurisdiction. If you decide it one way, the prisoner goes free from your arrest, and may assert his freedom before a jury. If you decide the other way, you—yes, sir, *you* send him bound in chains into slavery. This great issue of law upon which may hang the liberty of a man for life, is by this strange statute, and your construction of it, placed in your hands. By your simple individual construction, without the possibility of appeal to any other tribunal, or of revision by any other, this vital question must be settled. In other words, it is entirely in the hands of an officer confessedly and professedly acting only as a ministerial officer, not a judicial officer under the laws of the U. S. Your whole right to grant the warrant or decree, depends upon your own construction of your powers under this act, which construction is denied by the prisoner's counsel. The whole question depends upon your decision, not merely for primary or irresponsible decision, as is always the case in questions passed upon by ministerial officers of courts, and as such, subject to appeal and revision by the judicial tribunal which appointed them, but your decision is *so absolute, so final, so conclusive*, that even the Supreme Court of the United States cannot impeach or interfere with it. Your certificate must have full sway, and do its perfect work in sending this captive in chains to Georgia, although every judge of every court of every state through which he may pass, and every Judge of the Supreme Court of the United States may know your decision to be erroneous. Now can that be a law for free people to live under? Here is a power vested in a Commissioner by his own construction which is denied by the counsel, and yet his construction wholly unimpeachable, though that is not the precise word I wish to use.

THE COMMISSIONER. Unassailable!

MR. LORING. I thank you for the word; wholly unassailable by all the courts of the United States. The construction of this law cannot be carried to the highest court. The Supreme Court of this State have refused a writ of *habeas corpus*, not however applied for by my advice. The District Court of the United States have refused one. The Circuit Court will perhaps do the same. There is no tribunal but this. Surely a law which places such power, involving such enormous consequences in the hands of a subordinate ministerial officer of a subordinate Court, and removable at the pleasure of the Court, however learned, honest and respected, must be unconstitutional, or *must demand* some modification, so as at least to furnish the right of appeal. Can such law of the United States be constitutional?

THE COMMISSIONER. How can those considerations affect my duty?

MR. LORING. I should think they would make you solemnly reflect upon the heavy responsibility which rests upon you.

THE COMMISSIONER. I trust I am sufficiently sensible of my responsibility. How can that affect my duty?

MR. LORING. These considerations should be of moment in determining upon the constitutionality of a statute purporting to invest a merely ministerial officer with such power of finally deciding judicially a momentous legal question, upon which the lawfulness of his procedure entirely depends. If I did not wish to confine my arguments to one or two points I could not forbear allusion to one other striking feature of the law in this connection; not as reflecting upon yourself; for I know you too well to suppose for an instant that the consideration could have the slightest influence upon your decision. On the contrary, I believe your sense of honor and integrity to be such that it would exercise a contrary influence, if any. Yet it is not to be overlooked in contemplating the true character of the law, that it exposes the very judge who is trying the case, to the mortifying humiliation of knowing that the nature of his decision is to affect the amount of his legal compensation; and worst of all, that the increase of compensation follows a decree against the right of a human being to his freedom. And as further judicial degradation, you may be required to receive and act upon testimony *as competent and conclusive*, because certified and sealed as such by the petty magistrate of a county Court in a foreign state, and it may be one half civilized, which as a lawyer, you may know is neither competent nor certain, and ought not to be looked to for a moment as decisive of such a question.

If I had time to follow the arguments of my learned colleague, and to cite to you the authorities which he has given, I should not do it for two reasons. In the first place I think that he has exhausted the argument. In the second place I think you will certainly read those authorities before you decide the case.

THE COMMISSIONER. Certainly!

MR. LORING. But although that argument has been stated in many respects in a novel and forcible manner, I shall ask leave to place in your hands a printed argument on the subject of the constitutionality of this law, although I do not approve of the denunciatory language in which it is worded; I mean the argument of Hon. Horace Mann, in the House of Representatives of the United States.

If you will permit me to repeat what I think has been demonstrated, I will say that to my mind the argument and authorities have proved that this law, so far as these proceedings of the Commissioner under it are involved, is unconstitutional, and therefore void for two reasons.

1. As contravening the express provisions of the Constitution in the 7th article of amendments, that "In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved," and the 5th act of the amendments, that "No person shall be deprived of life, liberty or property, without due process of law;" and the 2nd sect. of the 3d article of the Constitution, which provides that "The judicial power shall extend to *all cases* in law and equity arising under the Constitution, &c." I embrace them all under one point. I submit with great confidence that if you will examine the decisions of the Supreme Court of the United States, which have been read by my colleague, in support of these positions, that they demonstrate that this proceeding falls entirely and precisely within every one of these denominations; that it is a suit at common law; that it is a case within the Constitution of the United States, subject only to judicial examination, power and decision; and that it is a case in which if the defendant be delivered over to the plaintiff, he is deprived of liberty, without due process of law.

2. The second point is this; that the argument and authorities have also demonstrated, that the powers which this act purports to confer upon the Commissioner, and which he assumes to exercise under it, in these proceedings, are judicial powers, not preliminary, but throughout judicial; but which cannot lawfully be vested in, or exercised by any persons not appointed, qualified, compensated and having tenure of office, as provided for by the Constitution. The authorities cited are equally conclusive of this.

I am at a loss to imagine how your Honor, or any other man, can read the case of *Prigg* v. *Penn.* 16 Peters, p. 616, without finding that every one of these propositions is there maintained.

The affirmative argument against the constitutionality of the law on these grounds having then been thus exhausted, and my duty and inclination limiting me to a reply to the arguments, by which this procedure is attempted to be sustained, I shall confine myself mainly to the two positions taken, in maintaining the constitutionality of this law, and to the grounds taken in behalf of the claimant. And these I understand to be:—

1. "That provision of the Constitution was intended to enable the slave owners to reclaim their fugitive slaves." I concede it.

2. "The act of Congress of '93 was intended to facilitate such reclamation; and there is no essential difference between that and this." I admit the first of these propositions, but the second I deny.

3. "The act of reclamation is simply extradition; and the proceedings here look no further." That I controvert.

4. "Congress has rightly conferred this power upon Commissioners." That is begging the whole question.

I. I will direct your attention to the great point in the case. It is a mere question of law. I understand your Honor to intimate, and I understand the counsel for the claimant to present no other ground upon which the constitutionality of this law is to be maintained, than upon this, that the proceedings in question are not in the nature of a civil suit or criminal prosecution, or a case in law, and will not deprive the captive of his liberty, without due process of law, because it constitutes merely a preliminary proceeding in a judicial inquiry to be summarily made, designed to accomplish a specific and limited object; and not to try and finally settle the right in contestation; the specific and limited object being merely the extradition of the prisoner to the person claiming to own him, to be *carried* to the place *whence* the captive is alleged to have escaped. I think I state substantially the position taken.

THE COMMISSIONER. Yes!

MR. LORING. II. The second consideration by which the constitutionality of this law is sought to be maintained, and to which I shall ask your attention,

is this: That these provisions of the Constitution do not extend to slaves, they not being of the people of the U. States, and that this law being intended only to secure the arrest and extradition of fugitive slaves, is not within the control of these provisions; and that if by misapplication it should be attempted to be enforced upon a freeman, he can have no remedy under these provisions, because the law was not designed to apply to him, and it can only be so by accident or malice; and is therefore constitutional, and may be enforced against him, he being arrested under it as a slave; and that it must proceed in due form, because he has his remedy if he is free, as all other persons have.

MR. THOMAS. What provisions do you refer to, as not extending to slaves?

MR. LORING. Those under which we claim for him right of trial by jury, &c.

It is obvious that in order to determine the true character of this law, and of the proceedings under it, and how far the arguments against its constitutionality are well founded, or how far they are refuted by the objections, and the reply to them, it is necessary that we perceive clearly what are the relations and rights between the parties to the process, which are its subjects; and what would be the result of the operation of the law, if carried into effect as the claimant requires upon those legal relations and rights. For the question of its constitutionality may depend greatly, if not entirely, upon the consideration *whether* its object and effect are to *determine* those relations and *enforce* those rights, or are *merely to place them in the course of judicial investigation and determination;* or whether they will be left *wholly untouched and undetermined.* I therefore shall go quite carefully into this consideration.

Who then are the parties? What are their alleged relations and rights, which are the subjects of the process, and for the determination and enforcement of which this proceeding is instituted, and upon which it is defended?

The party claimant is an inhabitant of a slaveholding State, who asserts a right of property in the person of the captive; and the right of immediate possession of his person; mark my words, Sir, *the right of immediate possession of his person here, with power* to carry him to the place whence he alleges that he escaped from slavery, *and so to reinstate him in the condition of a slave,*

The party defendant is a man in form, intellect and feelings, a human being, who claims that he is a free citizen of the State of Massachusetts, and asserts that he has the right to go where he listeth, and serve only whom he chooses; and that he shall have this question proved by due process of law, if to be tried at all.

If the claimant has the legal right which he asserts, he is entitled to immediate possession of the defendant, with power to carry him in chains to Georgia; and, as I conceive, elsewhere, as he may please, with power to hold him as a slave now and throughout his whole journey until he is in Georgia, unless the defendant can then procure his freedom, by some other and to him unknown process of law, after he shall have arrived in Georgia, if he ever gets there. If the captive has the lawful right which he asserts, he is entitled to go free into the fresh air and sunlight, subject to no man's power or will.

Such are the parties, and such the rights and relations of them as respectively alleged by them, and upon which they call on you to adjudicate; and in the assertion of which each is entitled, in the first instance, to the equal confidence and regard of your Honor. You have at least no right to presume any thing in favor of this claimant, even if you are not bound to presume that the captive is free, which I think you are, though I believe you have intimated the contrary opinion. Still you are not bound to assume him a slave.

Having considered the rights involved, we have then next to see what will be the result of your decision upon them, if this law be allowed to go into operation, and the end sought by the claimant be accomplished; because it is to that we must look.

What will be the effect to the claimant? His right of immediate possession and entire control of the person of the captive, with power to carry him in bondage into a far distant State, becomes absolute; not only *absolute*, but it becomes UTTERLY UNIMPEACHABLE BY ANY HUMAN TRIBUNAL.

His right, allow me to repeat it, for I think the statement contains in itself an unanswerable argument against the exercise of the power,—his *right* of *immediate possession* and *entire control* of *the person* of *the captive, with power* to carry *him in chains, bound hand and foot,* into *a far distant State,* and to *carry him all* that distance *as his slave,* is *made absolute,* and *unimpeachable* by any *human* tribunal. That will be the effect so far as the claimant is concerned.

In regard to the prisoner, sir, if you decide against him, the consequence will be that his alleged right of personal freedom is taken from him, and he is delivered over, bound hand and foot, to the absolute power, and subject entirely to the arbitrary will and mercy of a master, to be carried, as I contend, he knows not where, or at any rate to be dealt with as none but himself and his master may ever know how. That is the consequence to him.

Now allow me to read this law. I am only going to read it to show what will be the effect of your certificate, if you grant it. Upon satisfactory proof being made, the Commissioner is to grant to the claimant "a certificate setting forth the substantial facts,"—I beg your Honor to follow me carefully — "a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the state or territory in which such service or labor is due, to the state or territory in which he or she was arrested, with authority to such claimant, or his or her agent or attorney, to use such reasonable force and restraint as may be necessary, under the circumstances of the case, to take and remove such fugitive person back to the state or territory whence he or she may have escaped as aforesaid." I call your attention to what you are to certify. You are to certify that he owes service or labor to this claimant. You are to certify that he did escape from the claimant. And then you are to order him to be delivered up to the claimant, and give him authority to seize and carry him back.

Let me turn your attention to the tenth section. It is said that this is a preliminary matter. Now let us see what your judgment will be. I begin on the tenth line of the tenth section: — "And a transcript of such record, authenticated by the attestation of the clerk, and of the seal of the said court, being produced in any other state, territory, or district in which the person so escaping may be found, and being exhibited to any judge, commissioner, or other officer, authorized by the law of the United States, to cause persons escaping from service or labor to be delivered up, *shall be held and taken to be full and conclusive evidence of the fact of escape,* and that *the service or labor of the person escaping is due to the party in such record mentioned.* And upon the production by the said party, of other and further evidence if necessary, either oral or by affidavit, in addition to what is contained in the said record *of the identity* of the person escaping, *he or she shall be delivered up to the claimant.*"

You have to find these facts — that he did escape, &c. You are to be conclusively bound by the record; and upon the faith of that record you are to deliver him up to the owner, and then you are required to give a certified record of your judgment, that you have found those facts; that you have adjudged him to be a fugitive from slavery; that you

have adjudged that he does owe service; and then you are to give the master a certificate of his right and title, which shall authorize him to seize and transport the alleged fugitive to Georgia; and that certificate, by the tenth section, is made conclusive of the right of the claimant "to take any such person identified and proved to be owing service or labor as aforesaid," and the "certificate shall authorize such claimant to seize, or arrest and transport such person to the state or territory from which he escaped." And that certificate shall be good against the decision of any judge, magistrate, or other person whomsoever. I have been careful to read those sections because I have much to say of them.

Let me, then, with great respect, sir, ask you the question, What is the result of the inquiry or proceeding now pending before you? What is the decree you are called upon to make?—and what is to be the effect of that decree, if against the captive? Those are the three questions I wish to propose.

In the first place the immediate result is, that you adjudge the captive to be a slave; that you adjudge that he belongs, as a slave, to this claimant; and that you order him to be delivered up directly into the claimant's hands, as his slave—not delivered over to the officers of the law, but to the person claiming ownership, and of course delivered to him as owner—for on no other pretence can you do it—and without any qualification or limitation of such right of ownership.

Now I ask you, sir, is that any fair meaning of the term extradition? Can you point me to any case in the world; can you point me to any legal dictum going to show that that is extradition; that that is a mere summary proceeding or delivery for the purpose of final adjudication; a mere preliminary decision not determining any right between the parties when it delivers him bodily into the hands of his master as his slave?

THE COMMISSIONER. I do not agree that I am to certify that he is a slave.

MR. LORING. I have read you what the act states.

THE COMMISSIONER. I am to grant a certificate setting forth the substantial facts of his escape from the claimant. I have considered this whole subject with care. My view of it is this; that it is my duty, if satisfied, to make out a certificate, not certifying that he is a slave, but certifying what are the facts; First, that somebody escaped and owed service; and second, that this individual is the identical person. But there is a difference between that and certifying that a man is a slave.

MR. LORING. How can you order him to be delivered over to the claimant if he be not his slave?

THE COMMISSIONER. I certify to the substantial facts.

MR. LORING. The distinction is too refined to enter my mind.

THE COMMISSIONER. I think when you see the form of the certificate, if there be one, you will see the difference.

MR. LORING. Allow me to go one step further. The Commissioner is required to furnish the claimant with *documentary evidence of his title* that shall be UNIMPEACHABLE through the length and breadth of the land. You furnish him with a document stating that he has a right to carry this man to Georgia.

THE COMMISSIONER. That is the effect of it.

MR. LORING. The effect is all I look to. You are not to furnish a certificate of what the petitioner claimed, and what the prisoner denied, and that he is to be taken to Georgia to be tried upon their respective allegations. That is not the certificate you grant, which it should be if this were an extradition; but you are to give a certificate of all the *facts found*, of the *judgment rendered*, and of the title proved, AYE, A CERTIFICATE OF THE TITLE PROVED, to take with him for the very purpose of exhibiting his title, and which will every where *prove* his right of possession. It is to set forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the state or territory in which such service or labor was due, *not merely as facts alleged and denied, but as facts proved*, and to be utterly conclusive of them for the time being; so that no court can question them.

Now, I ask, sir, what sort of extradition is this, which reduces a man from freedom to instant slavery, and delivers him to his master? For he is placed in his hands as a slave with the *documentary title* of ownership attached to his chains? If that is extradition, I should like to know what is not.

THE COMMISSIONER. I do not agree that I gave the master such a certificate.

MR. LORING. You must give him such a certificate as the statute requires.

THE COMMISSIONER. The master takes a certificate showing that it has been made satisfactorily to appear, by the record of a court in Georgia, that a certain man by the name of Thomas Sims, including his description, owed service and labor, and escaped; all which rests entirely upon the record in the Court of Georgia, which is conclusive upon my judgment, and which is not re-examinable here. Then it follows that Thomas Sims is the identical individual mentioned in that record, and that the claim is an authority to take him.

MR. LORING. I think you will have to add that he is delivered over to the claimant by your decree, or he will have no right to take him. The prisoner is not now in the claimant's possession, *and it can only be by your judgment and decree that he can be lawfully delivered over to him.* But whether you add it or not, the effect of your act is the same. He is delivered in pursuance of your decree, and by that title only does he pass into the hands of his master. If, then, the case stopped here, and the delivery to the master imposed any obligation upon the claimant to transport the captive to Georgia, I should maintain that the procedure, within no sense of law, within no principle of reason, can be counted extradition merely, but is a final adjudication of present rights between these parties; I do not say a final adjudication for life, but a final adjudication of present rights; because this judgment which you render, and this certificate which you present, operate not only as an immediate deprivation of this prisoner's personal liberty, but operate to transfer it to another person; operate in the establishment of an absolute present right of property, in the claimant, to the body and soul of the prisoner, which no one can take from him, at least until he shall have arrived in Georgia.

This is, therefore, a final conclusive and irreversible decision, for the time being at least, of the rights which the prisoner claims to liberty and the surrender of them to the claimant. Why, is it not so? Sir, how can we escape from this consequence? Is it not a plain, undeniable deprivation of this prisoner's liberty? He was free when this arrest was made. He would be now free if released from it, or if not delivered up under your decree. It is therefore by your decree that his liberty is taken from him and he is made a slave. And if he is a freeman as he alleges, and which you, sir, if not bound to presume, cannot deny but upon proof by due process of law, he will be a freeman reduced to slavery by this proceeding. And if he is sent to Georgia, his liberty will have been taken from him, not for the purpose of having that question of liberty tried, but for the purpose of delivering him into the hands of his master, to be carried there as a slave. And that great question, then, is settled for the present, without due process of law. For no one will pretend that these proceedings constitute

due process of law within the meaning of the Constitution when providing for the personal liberty of freemen.

It is also, sir, an adjudication of the right of the claimant to hold the person of the prisoner as property, and use him as such for a certain period of time at least. Will you inform me whether there can be any limit to the control of the master over him as a slave. Can any one say that he may not use him as a slave, demand service of him as a slave, feed him as a slave, beat him as a slave, if he resists, confine him as a slave, do every thing but take his life as a slave? This right of a master becomes immediately vested in the claimant by virtue of your decision under this law; and so finally adjudged and vested, that it cannot be impeached or inquired into by any tribunal in the land. This law, thus administered and acted upon, deprives a man of the liberty he was enjoying, and makes him, for the time being, at least, irrevocably the slave of another man. How can this be considered or called extradition merely? I submit to you that extradition, as defined by the law of nations, or in exposition of treaties as understood in legal phrase and practised by the courtesy of nations, and according to the Constitution of the United States, never establishes any alleged right between the parties for any moment of time, however brief. Does the delivery of a fugitive from justice settle any right? You answer that it deprives him, for the time being, of his personal liberty. I submit that it does not, sir. It takes from him *no liberty to which he has a right*, because by the laws of all civilized nations it is part of the social compact, that when one living under any government or within its jurisdiction has committed a crime or is charged with having committed one, he shall be arrested that he may be tried. No liberty is therefore taken from him but what for that purpose he has agreed to surrender; no *right of personal liberty* is wrongfully taken or invaded. But when a freeman is taken and surrendered to one claiming him as a slave,—his *right* of *personal* liberty is *violated;* that is taken from him which he never agreed under any circumstances to surrender;—the right of possession and control of his own person are taken from him and vested in another; he is immediately made a slave.

Extradition merely extends to placing the parties in a proper legal position to try and settle by legal means the right alleged and demanded on the one side, and denied on the other. And allow me to say, although I have had but little time for the inquiry, I challenge the production of any legal decision which contravenes this doctrine. Until both parties have been heard before the proper tribunal no right is established on the one side, or taken away on the other. In the extradition of a fugitive from justice no wrong is done to him. Such a restraint as is imposed by that law, he agrees to submit to as a citizen of the government. He has made a compact. But is that the case of this colored man who asserts his freedom, and where it is attempted to make another man his immediate master?

Here, if the law had merely provided for the extradition of the alleged fugitive into the hands of the legal authorities of the State from which he is alleged to have fled, and merely deprived him for the time being of so much of his personal liberty as might be necessary to try the question of right, a very different view of it might then be presented, and with some other qualification its constitutionality might be sustained.

But this law does not so provide. It does not merely arrest and keep in order to determine the right, but it at once, without delay or opportunity to him for inquiry by any due course of law, determines the right, and delivers the captive over to instant and unqualified and absolute immediate slavery.

Let me ask you, Sir, where and how you will define the limits of this man's power. You decree that he shall be delivered over to his master. He cannot be delivered over upon any other pretence than that he owes service: and you are not authorized to impose any terms or limits upon such delivery.

I submit that the right of the claimant to him as a slave, for the time being, upon his reception of your decree, is not merely recognized, but it is established. It is judicially established. It cannot be denied in any tribunal. It is conclusive upon the Courts of the United States; and as I submit, is so, contrary to all reason, and contrary to the express provisions of the Constitution and the laws.

But I understand it to be suggested by your Honor, and I have seen the argument elsewhere put forth, that this procedure is not a suit, but amounts to extradition only, because it finally settles no rights, because the adjudication of the Commissioner is not final and conclusive as to the right of the claimant and the slavery of the captive; but that this question may be tried again in the State to which the prisoner may be taken; and that his certificate cannot even be given in evidence in such future trial, and so that those who judge the case in that other State would not be prejudiced by the judgment of the Commissioner. It may be so. It may also not be so. It is enough to say that this Statute does not confine the effects of the proofs it provides for, to the mere delivery of the captive to the claimant; it does not say that your certificate may not be given in evidence anywhere; but it declares that it shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party mentioned in the record, and that he shall be delivered up.

But whether it has this limited effect only, or not, I submit to you, Sir, that the judgment of the Commissioner is not for a delivery for the trial of a right, or for the adjustment of a right, or for the other party to claim a trial and assert a right, but that it is final and conclusive of the present rights of the parties. It is final until the claimant shall have reached the State of Georgia with his prisoner, if nothing more. And the prisoner until that time will be his absolute slave, and may be dealt with as such. And as the avowed object of the Statute was to return him to slavery—as that was the declared purpose of the law, I submit that this proceeding is final for that purpose—for the purpose of putting him into slavery—and cannot be appealed from, and therefore is a present final adjudication of the rights of the parties.

I say further, that service may be demanded of this man from the moment that he is delivered up, and the lash applied from Delaware to Georgia, if the delivery of the prisoner be made to the petitioner as of a slave. Who could interpose to deny his authority as a master? Does this certificate impliedly impose any obligation upon this master? If he may not exact service in a free state, may he not do it the moment he crosses the line of Maryland? May he not exact service there, and may he not apply the lash, as I have said, to his back in Maryland, and so on through Virginia, North and South Carolina? Who will gainsay the right of this master, thus to require service; and what is the consequence? The captive, a freeman though he may be, cannot appeal to any tribunal of the state, or of the United States for relief, because your certificate, your decree has settled irrecoverably, that he has no right to appeal. Has there not been a final adjudication then between these parties? It is, I repeat, at least final and conclusive, until they arrive at Georgia; and during all that time no human being can prevent this.

I submit, therefore, that the judgment of the Commissioner is not for extradition merely, but that

it is a present, absolute, final and unappealable judgment upon the present rights of the parties. I should like to ask, sir, and you will excuse the apparent want of respect in the inquiry, Did you ever think that judgment in a writ of entry, was not a final judicial determination of the present and possessory rights of the parties, although the plaintiff may have his writ of right to try the title again? The first settles finally the right of present possession. So your judgment and decree settle finally the right of immediate possession, by the claimant, of the person and service of the captive in this state, in New York, Delaware, New Jersey, Pennsylvania, Maryland, Virginia, the Carolinas, and to the interior of Georgia, at least settles his right there, and no person can appeal from it. The analogy is perfect, even admitting that the prisoner could obtain a trial of the title at Georgia.

THE COMMISSIONER. Does it not let the master exact service from the fugitive from labor, in the same way as the officer has control over the fugitive from justice?

MR. LORING. If the officer in charge of a fugitive from justice, could exact service from his prisoner and punish him as he might choose, the cases would be more similar.

THE COMMISSIONER. The officer can treat his prisoner as he chooses.

MR. LORING. I beg your pardon, sir, but I cannot agree with you. An officer having a fugitive from justice, could not exact service or inflict chastisement, without gross violation of his duty, and accountability to the government employing him, and of that government to the government surrendering him. But what duty does the claimant of a slave violate in treating his captive as such, after being surrendered to him as *such* by *a legal process and decree;* and to whom is he accountable, and who shall make him so? If any promise had been made, or any obligation imposed, that the claimant should carry back the captive to the state whence the escape is alleged to have occurred, and should there present him before any competent judicial tribunal, with opportunity for him to try the question, then the law would be less obviously obnoxious to the imputation of oppression, cruelty, and unconstitutionality, than it now is; and although the temporary deprivation of the defendant's liberty, and the appropriation of his services to the claimant would have rendered it sufficiently hateful and unconstitutional, yet it would be the less so than it now is, in thus placing the liberty of a man who may be free, wholly at the mercy of one who claims him as a slave. I claim on this point your most careful reconsideration according to the best view of the subject you can gather from the dictates of your own conscience and your utmost scrupulous examination of the subject.

THE COMMISSIONER. You shall have it, sir.

MR. LORING. The idea that your hand-writing may consign that man to endless slavery!

THE COMMISSIONER. That I cannot believe.

MR. LORING. I submit to you with perfect confidence, that your decree to deliver the prisoner places his liberty for ever in the power of the claimant. There not only is no provision made that the claimant shall give security that he will carry this man back to Georgia; or any express obligation imposed upon him to do so; but more than that, this act implies no such obligation. The claimant is left perfectly at liberty to do as he pleases.

In order to know what the law intends, and what it accomplishes, we must see what may be done under it. It will not be denied, sir, that the claimant may take this prisoner to a plantation in the interior of the State of Georgia, far from any court house, or lawyer, and very far from any persons having sympathy for men of his color and power to aid him. Nor can it be denied, if this claimant chooses he may for the rest of the prisoner's life, deprive him of the power of appealing to any tribunal for redress. I am arguing of his moral and physical power. He may, with your certificate, take him to Alabama, to Mississippi, to Arkansas, or to Texas, or for aught we know to New Mexico. He may sell him to a border planter where the hope of appeal or relief may never come. He may send him to Cuba, and sell him there. He may sell him in Virginia, in North or South Carolina, and expose him to be sent to Cuba by the person who purchases. I am saying what he may do. Or he may, by his cruel treatment of this man, by starvation and by stripes, by hunger and by cold, and by all the undiscribable torture that may destroy the mind of a slave, break down the spirit of this man, so that though he be a free man, as he swears that he is, he may be so terrified that he shall never dare to attempt to regain his freedom.

All these are possible, and some of them probable resources for preventing forever any hope of trial or appeal, by persons seized under this law, and rendering their slavery alike helpless and hopeless. All this is certainly entirely within the power of the claimant, and dependent wholly on his mere will and pleasure. And thus the judgment of a Commissioner, whatever may be intended, or however he may construe the law, *becomes, to all practical consequences, a final adjudication* for life, of the liberty or slavery of the prisoner; and under a form of process by which freemen may be taken as well as slaves; and that they will be taken as well as slaves, I have no manner of doubt.

How is this argument encountered? Why we are gravely told, that the Commissioner is only to decree delivery of the captive to the claimant, and grant a certificate of the facts proved, namely, the title and escape, with authority to the claimant to transport him to the place whence he is alleged to have fled.

Let us suppose that the claimant is satisfied with your decree, and with the delivery based on this proof. You are to "deliver him up to the claimant," as you will find in the 10th Sec. Suppose then that the claimant does not want your certificate. Suppose that he tears it up in your presence, or burns it as he crosses the line of Maryland, where his title will not be disputed. What then, Sir? If there were any obligation imposed by that certificate or implied by this law, to carry that man to Georgia, what becomes of that obligation? Who feels it? Who can enforce it? Does the claimant feel it? Certainly not! He thinks that he owes nothing legally to this man, whom he holds as a slave, and who cannot escape from his control, and may be kept far away from Courts, or lawyers, or magistrates. The moment he crosses the line in a slave State, your certificate is destroyed or concealed; and if it ever could have availed the captive any thing, it would then cease to do so. And this man whom the claimant calls his slave, and makes his slave, is placed in his power, with the most unlicensed authority to do with him as he pleases. Pray tell me how this law can be supposed to imply an obligation to carry this man to Georgia, when he is placed so immediately and so irrecoverably in his master's power, without the slightest evidence of such obligation on the part of the claimant or any possible means of enforcing it. What forbids the master from selling him on the way, or reducing him to service elsewhere than in Georgia? or how is the captive in chains to obtain redress, if the master does so?

Nothing is plainer than this, and I beg you, sir, to read that law in this point of view. Nothing is plainer, I say, than that *this certificate is not given to define the right or power of the master* or *to limit* it to transportation merely. It does not purport upon its face to prescribe any such limits.

But the *certificate is given solely* for the PROTECTION OF THE MASTER *that his title shall not be disputed or molested on the way; that he may travel safely* through the *free states;* not *for the protection of the slave;* not *to allow* him to have a trial if he is abused on the way; not to give him a right of legal process if the master does not carry him to Georgia, *but that the master may, if need require, produce your irreversible certificate that he is his slave.* It is something which you may give, or may not give, as the claimant may choose. Something which is of no use to the alleged slave, but is of use only to the claimant in the free states; and which the master may dispense with at his pleasure.

I come now to a point which I think of great importance, and to which I ask particular attention:—it is founded on one of the positions stated by the claimant, that this law was enacted to enforce the rights of slaveholders secured by the Constitution. It undoubtedly is so; and therefore, I affirm, does not, and was not intended to limit those rights.

What right, then, is this law meant to enforce? The law creates no right. This law makes no man a slave of another man. This law vests in the slave-owner no right which he did not have before. Thank God, Congress has no right to add one jot or one tittle to the burdens of the slave. And I suppose our Southern friends thank God with equal sincerity, that Congress has no power to take away any legal right which the master has over his slave. What then is the right which this statute was created to enforce? Let the Constitution tell you!—The Constitution says substantially that if a slave escape from his master, he shall not be discharged from service or labor, *but shall be delivered up.* Delivered up *for what?* To be *carried back? The Constitution says nothing of the kind.* A master's right is absolute when the *captive is delivered up to him, and not conditional, or for a limited purpose.*

Look a step further. The Supreme Court of the United States says that that right of the master *to seize and hold his slave,* is *as much his right* without *warrant or certificate* as *with it.* Does your certificate, then, increase or limit that right? Clearly not! But the moment the right is enforced, it is absolute; not limited by the process by which you enforce it. The mere fact that he obtained his possession of his slave through your decree, does not affect its absolute nature. The law requires of you to order him to be delivered up, and affixes no limit to the purpose of such delivery; and the master receives him as a slave, to the same effect as if he had seized him without your aid. You have no right to decree the delivery for any limited purpose, and any limitation attached to your decree or certificate, would be unlawful and void. The Supreme Court of the U. S. has decided that the master may seize his slave wherever he can find him. That is settled. Here is a law not to protect the slave, but to assist in enforcing the rights of the master.

Congress has not made a law to protect the slave. Congress had no right to do that. If the master has got his slave, no matter whether by process of law, or by force of his own right arm, and claims to hold him under his Constitutional right, and not under process of law, he holds him without limit. He may carry him where and when he pleases, and when he gets him into a slave State, where a slave may be sold, he may sell him where he pleases. It is true that Congress may limit the purposes for which a law will lend its aid, but it cannot impose upon the owner any obligation to avail himself of it, or to submit to any limitations it imposes. And if he pleases to discard the protection of the law, and rely upon his right under the Constitution, he may do so. In this case, after delivery of the captive under the decree, the claimant may or may not avail himself of the protection afforded by the certificate;—and if he elects not to do so, and stand upon his Constitutional right to seize and hold his slave, no limit will exist to his power, which would not have existed had he seized him without process.

I repeat, Sir, therefore, that under this Constitution, which governs you, which is paramount to this law, that Congress could not have given the right to protect the slave, and that this certificate is only given for security to the master until the end shall be accomplished of the fugitive's complete subjection and return to absolute slavery. It is founded wholly upon the supposed proof that he had fled from slavery, and the only object is safely to place him there.

THE COMMISSIONER. Will you pause for a moment? I want to get this point very distinctly.

MR. LORING. Certainly, Sir!

Further, Sir, I think the argument irresistible that this law was *not intended* to *provide for extradition merely,* or to *impose any* obligation in the world upon the claimant to carry the captive home, from the fact that not only is no security required from the claimant that he will take the prisoner home, but that there is not the slightest intimation of any obligation to carry him back. I do not deny that there is an intimation that he may be carried back, but it is only in connection with his master's right to carry him back, and for his protection in so doing. Is it conceivable that Congress, if they intended any such protection to the captive, should have left him thus wholly unprovided for?

Congress must have foreseen that it was possible for a freeman to be arrested under this act. If then they had meant that this process should be merely for extradition, so that the party should be assured of the right of trial on his arrival in the place where he was carried, would they not have required security by bonds?—I say nothing of the still stronger view, Would they not have put him into the hands of an officer, and not into those of a master? Would they not at least have required security by bonds that the prisoner should be taken home and carried before some tribunal, with opportunity to obtain a trial?

Can we take a man's table or chairs from his house, without giving bonds to double the amount of their value, to be restored if they are illegally taken? Is a man's liberty of so trifling a nature that if it was endangered, Congress would make no provision for it? or at least have imposed no obligation, to the effect that he shall have a trial in the state to which he is taken, so that the prisoner might have some legal rights? Yet not the remotest suggestion of any such obligation can be found from one end of the act to the other.

Now, on this point I have to recur to what may not be considered very judicial, but I appeal to your own knowledge of the fact, which has a bearing on this point. You know that when this Fugitive Slave Bill was first proposed to Congress as a part of the Compromise Act presented by the Hon. Mr. Clay, it contained a clause rendering it obligatory upon the owner to carry back the slave to the state from which he fled, and there give him the security of a legal trial. I am told that that same amendment was proposed when this Bill was under consideration in the Senate of the United States, and was rejected. What is the necessary inference? It is that they did not mean to secure this right of trial to the slave then and there. If they had meant to secure that right, why should they omit that clause? Why did they reject it when it was proposed?

THE COMMISSIONER. Is that a judicial means of consideration?

MR. LORING. I think so. The fact of absence of any such provision in this act, is a very strong fact. And then the fact that this proposition was made and was rejected, is evidence that it was not

intended by Congress to secure a judicial inquiry in the state to which the fugitive is taken.

THE COMMISSIONER. Does not this suggestion imply an inquiry into the motives and feelings of everybody who had occasion to vote for that bill?

MR. LORING. It is perfectly immaterial what their feelings were. The fact shows that the provision was not intended to be implied, whatever were the motives or feelings which excluded it.

THE COMMISSIONER. One man excludes it for one reason, and another for another reason. The reasons of them all cannot be ascertained.

MR. LORING. The proceedings of conventions are always cited in connection with every law. In this very case of Prigg, or in one of the cases which has been decided, they even go into the consideration of the official correspondence of governors of states, to show the reason why the law was passed. Certainly it is competent.

But even if your construction of this law be true, that the claimant is bound to take the prisoner back to Georgia, look at it practically, and it cannot be considered as extradition. What security, when he reached Georgia, would the alleged slave have, for any trial of his right there? The claimant could on his arrival, on crossing the line of Georgia, without the delay of a moment, sell this man as a slave, to a slave dealer, by whom he might be taken to other states, to Alabama, to Mississippi, or to Texas, and to be continued on his journey there without stopping to take a meal, and without a moment of time to sue out process for the maintenance of his freedom.

You inquired of my colleague the other day, Are we to have no confidence in the state of Georgia?

THE COMMISSIONER. I beg your pardon.

MR. LORING. I so understood you.

THE COMMISSIONER. I asked Mr. Rantoul why it was unconstitutional for Congress to take it for granted that Georgia would secure rights to its own citizens? The question is whether it is unconstitutional for the reason that they did not put this provision in.

MR. LORING. Congress has not seen fit to appeal at all to the integrity or chivalry of the State of Georgia, but has left it in the power of any citizen of the State to carry an alleged fugitive out of the State after he has been returned, without the possibility of a trial.

THE COMMISSIONER. When Congress makes a treaty with a foreign power for the delivery of fugitives from justice, does it not confide in that power? and is there anything to prevent the officer from putting the prisoner to death?

MR. LORING. Do I understand you that a man when given up on an Executive warrant has no protection? Sir, I claim that a man delivered by the United States to the government of Great Britain is still under the protection of this government till he is tried. And if they dared to put him to death without trial, it would be ground for instant war.

THE COMMISSIONER. If he be a British subject?

MR. LORING. No matter what subject. But suppose an American citizen is in England. Suppose such a man commits a crime and flies to this country. He is an American citizen. Suppose a reclamation is made for him, on the ground of the alleged crime, and that he is given up. Then suppose he is hanged at the yardarm as soon as he is received on board the vessel, or as soon as the vessel arrives in the Thames. Do you suppose the government of the United States would acquiesce in that? No, sir! He is only delivered for the purpose of trial, and any violation of that contract would justify a war.

So it is here. If this man were delivered by the Courts or by your Honor to the Executive of Georgia, to be transported to that State, and was not transported there, there would be a claim by this State upon that one. But he is not delivered to any one but his master, and you have no claim upon him if he do not carry him back. Who has any claim upon him if he do not?

Can it be believed that no provision would have been made in this law for the dangers to which the alleged fugitive is exposed, if extradition only were intended, and if it were expected that opportunity would be given to settle, by due process of law, the rights in contestation? Such a construction is impossible, without imputing greater carelessness or baseness in framing laws, than ought to be predicable of a Congress of the United States. It would imply a total disregard of rights claimed to exist, or a base design to assume the appearance of protecting them for the purpose of making the law seemingly constitutional, while in reality sacrificing them.

But there are other intrinsic odious features of this law, if viewed merely as a process of extradition, that cannot be passed by unheeded.

In the first place, this law proceeds wholly upon the hypothesis that the person was held to service in the State where the claimant resides, and whence he escaped. If the person was not there held, and did not escape, the delivery of him to the claimant is not extradition, but *original delivery into bondage.* And the Commissioner is required to find the existence of the fact of being so held, and of the escape, upon *ex parte* proofs which he may believe to be entirely incompetent.

The awful responsibility, not to say odious duty, may thus be to convey a freeman who has never been a slave, to bondage, upon testimony which would not satisfy him if sitting as a judge on a question of property to the amount of twenty dollars; because the seal of some inferior court in an inland town or parish of Mississippi or Texas has stamped upon it the irresistible authority of infallible proof.

Again, if the process be of extradition merely, it may be *utterly* and *irretrievably* destructive of the liberty of a person *known to be free,* and cause him to be carried back to the place whence he is alleged to have escaped, on the same evidence which would have established his freedom in any free State in the Union.

Take the case of a slave brought by his master into a free state and there leaving his master, and thus made free by the laws of all free states. But by the laws of his own state that doctrine is repudiated. Suppose him arrested under this law by force of the transcript which it provides for proving that he escaped from his master there, and which transcript is made absolutely conclusive—and suppose his identity established as being the person named in the transcript. He is carried back. He demands a trial, and obtains one, and proves that his master carried him into a free state, and that he was living there as a freeman. The answer is that his desertion of his master in a free state, did not affect his master's rights, nor make him free; but that he still remained a slave, and must remain one till death shall strike off his fetters. And this law is to be maintained only on the ground that this is extradition merely.

Mr. Commissioner, I cannot close the view I have been attempting to present of this part of the case without saying what I sincerely feel, that there is not a free man or free woman of the free states of America, with African blood in his or her veins, in any part of the United States, who, if he or she may happen to be away from home, or from the immediate neighborhood where incontestable

proof of personal identity could be had at an hour's notice, could not be arrested according to this law and hurried at once into hopeless slavery. I go further, and I say it in the face of heaven, that no white man or white woman, however free, owes his or her security from such a fate, if found away from home, to any protection which the laws or constitution furnish. If we have any security at all, it is not because the law protects us, but only because it would be too bold or wicked a procedure for any southern slaveholder to venture upon. I have seen slaves as white as any of us. I tell you, Mr. Commissioner, that if you or I should be in any one of our distant territories, and identical in appearance with a certain slave, and a transcript should come from any state that that slave, with marks and various designations to describe him, had escaped from service, and a man should come and testify that he knew you, or me, to be that identical slave, your fate or mine would be sealed, and no law could protect us. Your safety and my safety depend at this moment, not upon the Constitution and the laws, but upon no persons daring to make the attack upon the individual upon whom it might be made. We have no other protection but that.

The poor captive delivered up under this law, if a freeman, has no protection. The person receiving him as his owner, is under no obligation to give any trial, nor can the person surrendered to him have an opportunity for one if the master chooses to prevent it. His liberty is taken from him and transferred to another, and he is made a hopeless slave, under forms of law, at variance as I believe, with all the first principles of jurisprudence, and in defiance of the provisions of the Constitution established for his protection.

But further, this analogy, if it may be so called, of extradition of fugitives from justice, does not avail to maintain this law. For the moment the question of the identity of the person arrested arises under the certificate, the analogy ends, inasmuch as in the case of the fugitive from justice, the question of identity must be open to inquiry by writ of habeas corpus, or writ of personal replevin, at any period of the process. Suppose a warrant under the treaty for surrendering fugitives from justice, is given for the arrest of *A. B.;* and suppose the marshal arrests *C. D.*, does not the habeas corpus enable him or his friends to recover his liberty? It is true they could not thus take *A. B.* out of the marshal's hands, but they can take *C. D.* from him. But, pray tell me, Sir, how *your law of extradition* in *this case is* to operate. Suppose your certificate granted, and that the prisoner could afterwards prove in Maryland, Virginia, or Carolina, by persons knowing him from infancy, that he had never been in the State of Georgia in his life, and that the person delivered over as Thomas Sims, was Joseph Santina, and who had been mistaken for him. A writ of habeas corpus would lie in case of a fugitive from justice, under a warrant of delivery to try that question. But under this proceeding no such inquiry can be made. Your certificate marches this man, free though he may be, and with a thousand witnesses who could prove it, a slave through the whole length of this land; and no court or magistrate can rescue him, or question his identity, any more than his right to his liberty. His identity being here once decreed by a subordinate ministerial officer of a subordinate court, by a summary trial, without opportunity for defence, and upon *ex parte* evidence, wholly short of legal proof, and it may be otherwise wholly incompetent, and without trial by jury, is irrevocably and conclusively established, and makes him at once a slave, and irretrievably so, at least for a long period of time, if not practically for ever.

Surely then this is not a law of extradition. Extradition would simply deliver him to be sent to Georgia for trial, and secure it for him there. It would leave him the right of *habeas corpus* to prove that he was not the person intended to be so sent. But your certificate sends him there free or not free, with no security for a trial, and no relief even if he be another person than that intended to be arrested.

Before your Honor shall decide this law to be constitutional, and affix your hand to that fatal certificate which shall convey this man, claiming to be free, to bondage, I invoke you to find at least one judicial authority, one settled principle of law, which can support the hypothesis that the delivery over of the person or property claimed, to the claimant himself as his, and with a certified judgment of his absolute title to it, is extradition.

But, Sir, I think I have an authority on that point to show that this identical procedure is not extradition. I have a case of the highest authority in point to that effect. I have here the authority of a tribunal by which you are bound. And it is the authority of the Supreme Court of the United States. The question is whether this is a case of extradition; whether

it is a mere preliminary judicial inquiry which you are going into for the purpose of sending a man from one State to another. I read to you the decision of the United States Court, to show that this procedure is not in the nature of extradition, but that it is clearly and entirely a case directly within the Second Section of the 3d article of the United States Constitution, which provides for judicial trials and for judicial trials only. You will allow me to read that article.

Art. III. Sec. 1st. "The *judicial power of the United States* shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges both of the Supreme and inferior Courts shall hold their offices during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office."

That defines who are judges and what is judicial power.

Art. III. Sec. 2d. "The *judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and the treaties* made, or which shall be made under their authority."

If the cases are cases of law or equity, then they are cognizable only by a judicial court. I will now refer to the 16 Peters, page 616. I read this simple language of the court.

"It is plain then that where *a claim is made by the owner out of possession* for the *delivery of a slave*, it must be made, if at all, *against some* other person; and inasmuch as the right *is a right of property, capable* of *being recognized* and *asserted by* proceedings *before a Court of Justice, between parties adverse to each other*, it *constitutes in the strictest sense* a controversy between the parties, *and a case "arising under the Constitution" of the United States; within the express delegation* of *judicial power* given by that instrument."

"The *right of immediate possession*" is the point, sir. Where the owner out of possession claims the slave, the right of that possession is here determined to be a case arising under the constitution. Can any one say to me that this petitioner is not here out of possession and claiming the possession of that man? And does not that man deny his right of possession? And if so, are they not parties in controversy? And is it not in the plainest sense of that decision a case for the decision of the judicial power of the United States, and of no one else? And is it not also plainly a suit at law including the right of trial by jury? And can you deprive him of that? You, sir, cannot proceed in this hearing and pass a judgment without overruling that decision of the Supreme Court of the United States.

I therefore submit, sir, that the answer attempted to be made by the learned counsel for the claimant to the argument of my colleague against the constitutionality of the law as investing the Commissioner with judicial power which cannot be exercised by any but judges appointed, qualified, and compensated in the manner provided for by the Constitution, and which answer consists in saying that this procedure is not a judicial determination of any rights, but merely a summary proceeding for extradition, is wholly unsound and untenable. And if this be so, then that position taken by my colleague, and supported by so many authorities, is unanswered and unanswerable, that the powers you are here exercising are judicial powers, and wholly beyond your jurisdiction. Your power is a judicial power, belongs to the judicial agents of the country, and cannot be delegated to ministerial agents only.

I beg your pardon for having occupied so much of your time upon this topic. I supposed that a single hour would dismiss me from your presence. But I feel very strongly the importance of the case, and if I have appeared in advocating it too earnest or tedious, it is to be attributed to my firm and unalterable conviction of the *fact* of the unconstitutionality and dangerous character of this law.

I come to the only remaining position which has been taken by others in favor of the constitutionality of this law. It is not one which has been presented by the counsel for the claimant, but it has been elsewhere urged, and may not have escaped the attention of the Commissioner. And that is: That this law is not unconstitutional and void in any of its provisions because it is intended to apply only to *slaves;* that slaves have no rights under the constitution; that they are not people, within the meaning of that word in the constitution; that they have no legal cause of complaint for any enactment made with regard to them; and that therefore the law does not infringe upon the rights of free men, and that this defendant, although he claims to be a free man, being arrested under a law applicable to him only as a slave, is thus brought within and subject to its provisions,

and has no right to claim the protection of the constitution.

Mr. Thomas. I shall maintain that this act was intended to facilitate the exercise of a right *which the owner possessed without such an act*, his possession growing out of the relations between master and slave.

Mr. Loring. I have supposed that you must take that position because the law cannot constitutionally stand upon any other. But I have already considered that. I will only remind the commissioner that if this law, as thus suggested, is merely to enforce the right of the master as it existed independently of the act, then the right is not hereby limited to extradition, but is absolute. I think that the ground which the counsel takes is a surrender of your right to exercise this power which he asks you to assert.

I confess myself wholly at a loss to understand this argument which I have stated. If it means merely that slaves are not protected by the constitution, and therefore cannot complain if arrested and returned to slavery in this manner, or that this law as applied to them only is constitutional, that is well enough.

The Commissioner. To what argument do you refer?

Mr. Loring. I refer to a printed argument in which it is contended that the safeguards of the constitution do not apply to slaves, and that this act, being intended for them, cannot therefore be unconstitutional.

The Commissioner. Of course I shall go into the consideration of no printed argument floating in the community.

Mr. Loring. I have spent the little time I have had, in reading both sides of this question, and taken pains particularly to read all the arguments that have been made in favor of the constitutionality of this act.

The Commissioner. I cannot believe that such a course would be in consistency with my duty.

Mr. Loring. I hope that truth, if it reaches you from any source, will have its due weight upon your mind.

The Commissioner. Certainly!

Mr. Loring. If the argument means that this law as applied to slaves only, is not unconstitutional, it is well enough. I have no doubt that the cases contemplated were those in which slaves only should be arrested. It was a natural supposition when these laws were passed. Cases may doubtless exist where slaves may be thus taken, and who, not denying that they are such, and being certified to be such, may be thus given up to be carried back to their former abode. But when it is said that a freeman seized under this act is not entitled to these provisions of the Constitution, because the act, though confessedly unconstitutional and void as to him, was intended only for slaves, and that it is merely accidentally or by malice applied to him, and so he must abide by its forms, requisitions and proofs, and submit to its inflictions, I am utterly at a loss what to understand. For if this be sound legal principle, there can be no protection against any law which Congress may pass, if it purports to be for slaves only; and any man seized as a slave, may be tried as a slave, and condemned as a slave upon the evidence made applicable to slaves only, although he may be a free man, and clearly entitled to freedom upon the evidence applicable to a freeman.

If this law were intended for slaves only, then I submit to you in order that we may be consistent, it is essential that the party arrested *be first proved to be a slave* before your Honor undertakes to apply the law to him. If the only answer to the unconstitutionality of this law be that it is intended only for slaves, and that therefore the party arrested is not to be protected by the constitution, then in the first place I contend you must prove him to be a slave by some process of law. You cannot assume that he is a slave, or take it for granted in the first instance in order to give jurisdiction under the law, and then rely upon the provisions and proofs furnished under it to prove that he is one.

Now allow me, sir, to say that the presumption must be, here and every where in the free states, that every man is a free man. And even in Louisiana, and I think in Virginia, the presumption that a man is free always exists when he has Caucassian blood in his veins, and only the contrary when he is purely black. In Louisiana certainly this presumption exists in the case of mulattoes as well as whites. I suppose, sir, it was founded upon the natural feeling that a man who is himself a free man and the father of a child is not to be presumed to have allowed his child to continue a slave. This presumption of freedom exists here. It exists under the Constitution of the United States under which you are trying this question, and under the Constitution of this State, which declares that all men are born free and equal. It is a presumption that exists under the laws of all the free states that a man is free. It is a presumption of natural right. Sir, if I might follow the argument down, I could show that

t has been the presumption of law for periods long anterior to Christian times.

This presumption must continue until rebutted by legal proofs, such proofs as are requisite to show that any man claiming to be free is a slave, and he cannot be made a slave by proofs applicable to slaves only, or proofs made competent only by a law pertaining to slaves. This man alleges that he is free. The legal presumption is that he is so; and no such proof exists here as will be listened to for a moment in the trial of any other question of equal importance. This man is entitled to an adjudication of this question. And how are you to settle it? You are to settle it by *ex parte* evidence taken in Georgia, and which you are obliged to consider competent proof. Now I hesitate not to say that the judge who took that evidence must have known that some of it was not competent evidence. I think that with the exception of one witness there is nothing but what might easily be reconciled with the conclusion that he is a free man.

Now this presumption being that he is free, and this law under consideration being applicable only to slaves, you have got to go further and obtain some additional evidence that he is a slave before you can have jurisdiction under the law. We claim his immediate discharge. I take the claimant at his word that this law was intended for slaves only, and assert that this is a free man. I call upon the claimant for legal proof to the contrary; such proof as a free man is entitled to demand before his freedom is taken from him; and respectfully ask by what authority you hold him and are proceeding to try him by a law applicable only to slaves? The claimant cannot prove that this is not a free man by any proof which he has yet presented.

I come now, sir, to the consideration of authorities relied upon by the counsel upon the other side, and relied upon by the Supreme Court of this State in the decision which they pronounced yesterday. And I submit to you that there is no case whatever upon record which recognizes the power which you are called upon to exercise, *where the question of the constitutionality of that power was raised or presented to the Court—where that question of constitutionality was raised and argued.* The cases, I admit, contain language which embraces the doctrine contended for in behalf of the claimant. But *the questions* raised *here* were not raised there and were not decided there. The Supreme Court of the United States have expressly held in a case which I thought would be sent to me before this time, and which I will put into the hands of the Commissioner, in a case in Peters, on the effect of a Bankrupt Act, that the Court does not consider judicial decisions of any authority whatever, further than as they apply to the points necessarily raised by the facts. All mere *dicta* are nothing, if not called for by the facts, and necessary to the decision of the case. Such *dicta* are not of authority.

THE COMMISSIONER. That is, such *dicta* have no binding effect.

MR. LORING. They say *they are not of authority.* In this case of *Prigg* v. *Pennsylvania*, 16 Peters, you will find that the only question raised and decided was of the conflict of a state law of Pennsylvania with a law of the United States; and the only points decided were that the United States had a constitutional right to legislate upon the subject, and that the Pennsylvania law was conflicting with it, and therefore void; that was the whole question. There was no question whether the party who escaped was a slave or not. And the great argument upon the question was, whether the United States could pass a law upon that subject, and if they could, whether there could be State legislation upon the subject. Upon this last point there was a diversity of opinion. The decision contains a broad statement which would cover this case. But we all know that Judge Story, in the fulness of his mind, would often find his thoughts gushing from him on points which were not argued, and which he would not consider as of authority when brought up for reconsideration. No case exists, that I am aware of, where a person arrested as a slave, claimed trial by jury as a freeman, and the court was called upon to consider *this question.*

At the time when the law of 1793 was passed, no slaves were supposed to have obtained their freedom by being carried into other states, and the questions which now agitate the community had not then been much raised. No one anticipated that a freeman could be taken under that law. All, or nearly all the states, held slaves till 1780. This state did not abolish slavery until the establishment of the constitution in 1780.

The doctrine that a slave brought here by his master was made free, is of recent discussion and decision in this state. I think it has been established only about fifteen years. I have not had time to trace its history or authority.

The law of 1793 was tacitly acquiesced in

simply because no question like this arose under it. I cannot find a single decision of the U. S. Court in which this question was raised and discussed and directly decided.—It is, therefore, no satisfactory argument to say that this law investing county magistrates with similar power has been acquiesced in. I say this question has not been agitated. It has been passed over *sub silentio*. The doctrine has been recognized, to be sure. But what I say is this; that the question of the right of Congress to confer upon these officers ministerial powers like those here asserted, has never been raised, never been argued to my knowledge until now. And therefore these cases which have been refered to are not binding authority for the decision of this case.

I have had no time to examine into the cases referred to by the Supreme Court in their decision of yesterday, until I did it this morning in your presence while my colleague was addressing you. I will refer to them all. The question may possibly have been raised in the case stated in Wendell, which is a long one, and which I have not had time thoroughly to examine. In the others certainly it was not raised.

The first case cited in *Prigg* v. *Penn.* is that of *Wright* v. *Deacon*, 5 Serg. and Rawle, 62, and to which the Supreme Court adverted yesterday. It is the only one in which the facts bear any analogy to this. It was a case where an arrest was made by a local magistrate under a warrant, and afterwards the case was taken before a Judge of the State Court on a writ of *habeas corpus*.

It was heard, and the person was ordered to be delivered up. The writ of *de homine replegiando* was issued, and it was held that it would not lie.

You will see the difference between this case and that, if you will look at it. The point of the authority of the Magistrate to issue the warrant or pass in judgment was not raised by the counsel. The only points raised by the counsel were, that the granting of the writ of *habeas corpus* was irregular *because the question was then pending before the magistrate* who issued the warrant, and that the decision of the Judge who issued the *habeas corpus* was not *conclusive;* but that under the constitution of Penn., and of the United States, the plaintiff was entitled to a trial by jury. So that in this case the counsel for the prisoner, so far from placing himself upon the ground that I place myself upon, that the local Magistrate or a Judge had no right to issue the warrant, and try the criminal, expressly conceded that right.

THE COMMISSIONER. Why was the *habeas corpus* issued?

MR. LORING. I suppose the *habeas corpus* was issued at the request of the slave, and the case went before the Judge and was there tried. This point in that case was therefore not only not raised as matter of defence, but was conceded away, and therefore was not there judicially decided.

The next case was that of *Glen v. Hodges*, 9 Johnson, Rep. 67. Neither the facts there nor the judgment of the court raise or imply any such question. The slave was voluntarily accompanying his master home, when he was arrested in a civil suit, and the question arose of the validity of the process. We have there a plain case of a master having lawful possession of his slave, and an unlawful taking of him by defendant out of that possession, so that no analogy to this case can exist.

Then comes the case of *Jack v. Martin*, 12 Wendell, 311. I have not examined that case sufficiently to speak with confidence. I find, however, that it was expressly admitted by the pleadings that the prisoner did owe service to the claimant under the laws of Louisiana. Mr. Justice Nelson, p. 315, says "under a common principle of pleading that every material fact, properly set forth and not denied by the adverse party, is admitted; the facts that the plaintiff owed service to the defendant under the laws of the state of Louisana, that he fled from that state and service into the state of New York, remained there against his will a fugitive from his service, till the seizure; and the seizure under the act of Congress, as set forth in the avowry, are all admitted on the record." Therefore, the question could not have been decided whether a man denying that he was a slave and alleging that he was free, could be so arrested and tried.

The last case is one of our own, in 2 Pick. 11, *Comm'th v. Griffin*, also referred to by the Supreme Court yesterday, but which does not touch this question in the least degree. The only point decided, was that the right given to the owner to seize a slave, without warrant, was constitutional. The Court does not regard any decided case as authority, beyond the strict application of the ruling to the facts proved. This case, then, does not decide the point which we have raised. I submit to you, therefore, that this

question which I am now agitating has never been decided by a judicial tribunal after it has been argued, and where its decision was material to the case.

Mr. Thomas. You mean the question of the exercise of judicial authority by the magistrates, as in this case.

Mr. Loring. Yes! The truth is that all these cases will be found to involve simply the discussion and settlement of the question whether Congress had the right to legislate upon the subject at all; and secondly, if it did legislate, then whether the State legislatures had any right to pass any laws upon the subject. And it was settled that the right of legislation is exclusively in Congress. Consequently, if the United States did pass a law upon the subject, and it conflicted with any law of the States, and the question arose which should yield, it was decided as a matter of course that the State legislatures should yield. But the point I am now discussing has never been decided.

I have only to say in conclusion, that I am aware of the adverse decision of the Supreme Court of this State, made yesterday upon an application by the counsel for this prisoner, with whom in that particular I did not act, for a writ of *habeas corpus*. I was present when that decision was made. It rests, as I understood it, wholly upon the assumption that this point was decided in the case of Prigg *vs*. Penn., and in other cases therein referred to; and that it was not a case for interference by that Court which might bring it into conflict with the Courts of the United States, inasmuch as the party had had a similar right of appeal by Habeas Corpus to the United States Courts. The decision was unavoidably hasty, without much if any deliberation, and without full discussion. The time allowed for hearing did not admit of any preparation, and it is to be regretted that the writ was not granted and opportunity given for full preparation and discussion of a question of so much interest and importance.

I yield to no one in the respect entertained for the decisions of that tribunal. No one can feel a greater desire that their judgment should be received with profound confidence by the bar and the public. I regret that they decided it so quickly upon a brief hearing within two hours after the argument, without examination of the cases, and on the ground that this point had been judicially settled before; because, Sir, I must say that with all the veneration that I feel for that tribunal, that decision has not weakened my confidence in the view which I take of the orginal legal question, however it may be supposed to have been tacitly settled by authority.

With regard to the other point, that it was not necessary to grant the writ of *habeas corpus* because the defendant had his relief in the Courts of the U. S., it seemed to be good ground for dismissing the petition.

With these remarks, thus hastily made, without any time for the examination of authorities, or any proper preparation to present such a case as it should be presented,—I leave the question of Constitutional law in your hands,—fully conscious of the feeble manner in which the duty has been performed: and shall add nothing to the able argument of my colleague upon the nature of the evidence, except to say a word upon the insufficiency of the letter of attorney under which the claimant's agent has instituted this process.

The sixth section of the fugitive act says, "When a person held to service or labor in any State or Territory of the United States, has heretofore or shall hereafter escape into another State or Territory of the United States, the person or persons to whom such service or labor may be due, or his, her or their agent or attorney duly authorized by power of attorney, in writing *acknowledged* and *certified* under the seal of some legal officer or Court of the State or Territory in which the same may be executed," &c.

It says the certificate or letter of attorney must be "*acknowledged* and certified under the seal of some legal officer;" that is, an officer proved to be capable of taking acknowledgments. The paper here presented purports to be acknowledged and certified before a notary public. We all know that that is a sort of officer for commercial purposes, whose duty it is to enter, and record, and certify protests of notes and bills, and of marine matters. If you will examine their duties and their fees, as regulated by the Constitution and laws of the state, you will find them exclusively confined to these subjects. A notary public is not an officer authorized to take the acknowledgment of deeds, unless by express statute enactment. Now in looking at the statutes of Georgia, we find no such authority granted as he exercises here. We find that he has authority to acknowledge and certify deeds of conveyance of real and personal estate. By what authority do they undertake to satisfy you that he has a right to take acknowledgments in a

case like this? All the evidence of any such pretended authority is the seal of a clerk of an inferior court. That is no proof. This is not a matter to be certified by him. The clerk does not appoint him or prescribe his duties. This authority could only be proved by exhibiting his commission, or by production of the law of the state authorizing a notary to take acknowledgments, and also proving that the person granting the certificate had power to certify to his being invested with the authority. Every one of these is wanting here.

I cannot imagine that you will for a moment entertain the doctrine that the certificate of a clerk of a Court, as to the fact of a person's being appointed a notary public, can also certify conclusively as to what are his legal powers. The statute which is on the table before you, has not given such person the power, or invested him with the authority with which he claims to be invested. Whether the Court has power to appoint this notary public, is certainly very questionable. But it is very plain that it cannot prescribe his powers. That must be done by statute. The clerk's statement is no legal evidence; and if it be, then anything else in the world may be as legally proved as that, by the same kind of evidence.

I appeal to the Statute of Georgia, which is here; to the power authorized to appoint notaries public, which is here; to the powers vested in notaries public, stated here; and I submit that it is only for the acknowledgment of particular species of deeds that he can act, and that he has no authority in such a case as this.

DECISION

OF

GEORGE T. CURTIS, ESQ.

DELIVERED APRIL 11, 1851.

On Friday last, Thomas Sims, a man of color, of about twenty-two years of age, was brought before me under a warrant issued at the instance of James Potter, a citizen of Chatham county, in the state of Georgia, who claims him as a fugitive from service. The hearing of this case has been continued from day to day, until the present time, and I am now to give my decision.

That decision it would require but a very short time to pronounce, if there had not been raised a question of law, which I must examine and pass upon. The learned counsel for the prisoner have argued with great ability the question of the constitutionality of the Act of Congress under which this warrant was issued, and have called upon me, as they had a right to do, to affirm or deny it. It can scarcely be necessary for me to say, that I should have been glad to have been relieved of this labor and responsibility, by any tribunal whatever, competent to assume the decision of the question; but inasmuch as my decision is final, so far as the restoration of the fugitive to the state of Georgia is concerned, and inasmuch as no court has felt it to be necessary to interpose to relieve me of this responsibility, I know of no reason why I should shrink from it. I have been told, indeed, by the learned counsel, who closed this case for the prisoner, (Mr. Charles G. Loring) that it seems to have been the design of the projectors of this law, to make it as odious as possible to the people of the free states; and that if it is held to be constitutional, endless agitation must ensue.

I have been told that my decision will send this man to perpetual slavery; and as if to increase to the utmost intensity the responsibility of acting according to its imperative requisitions, I have also been told, that there are many persons in this community, fully entitled to remain here, who will be placed practically and directly in the peril of its grasp, if it is held to be constitutional.

I am here to decide a grave question of law, the decision of which, so far as the rights of the parties before me depend upon it, has been unavoidably cast upon me. I am to decide that question upon my conscientious convictions of the truth; by an intellectual process, over which consequences can have no just influence or control. I have listened, with all the attention I could command, to what has been addressed to my reason. I have too much respect for the learned counsel, and have too strenuously endeavored to keep my mind in an attitude where it could appreciate his argument, to have allowed myself to suppose that any part of it was intended to be addressed to my fears. I recognize in his suggestions, and his earnest assertions, only evidence of the strength of his convictions, and of his sense of the importance of the opinions which he so ably and zealously maintains.

The learned counsel said to me, in the course of his argument, that there was a consideration connected with the Statute under which I act, which must be humiliating to this Court, and to every other that has anything to do with it, and that was, the clause which made the compensation to depend upon the manner in which the case was decided. If the learned counsel supposed that the sum of five dollars was likely to influence my judgment upon any question in this case, he did right in reminding me that the Statute provides for a compensation.—But it would, in my opinion, have been well, if the learned counsel, before he addressed to me this observation, had examined the Statute, to see wheth-

er, although it authorizes the Commissioner to receive a compensation, it imposes upon him any obligation to take it. If it does not, I see no cause for humiliation, and I certainly feel none.

In stating the views which I entertain of the various grounds of objection to the constitutionality of this law, urged by the learned counsel for the prisoner, I shall not undertake to answer the whole of their course of reasoning. My purpose will be to state the reasons which satisfy my own mind that their objections are untenable. Them I cannot expect to convince, under the circumstances of the present occasion; nor is it any part of my duty to endeavor to do so. My duty, according to my understanding of it, will be fully discharged by stating my own convictions upon the several questions that have been discussed. Nor shall I undertake to examine arguments that have been made elsewhere, or to follow and refute any processes of reasoning or declamation, that have led others to the opinions which they entertain, with regard to this constitutional question.

The first objection taken by the learned counsel for the prisoner to the constitutionality of this Act of Congress, is, that the power which the Commissioner undertakes to exercise under it is a judicial power, and the Constitution of the United States does not authorize Congress to confer judicial power upon any persons but Judges with stated salaries, appointed by the President for life, and holding their offices during good behavior. The 3d Article of the Constitution declares, that "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States," &c., and it also declares "That the judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and Inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." The Commissioner, it is very properly contended, is not such a Judge.

The principal authority relied upon by the learned counsel to sustain their position that the power conferred upon the Commissioner is a judicial power, is a passage in the opinion of the Supreme Court of the United States, (pronounced by Mr. Justice Story,) in the case of *Prigg vs. the Commonwealth of Pennsylvania*, 16 Peters, 616. That passage is as follows: "It is plain, then, that where a claim is made by the owner, out of possession, for the delivery of a slave, it must be made, if at all, against some other person; and inasmuch as the right is a right of property, capable of being recognized and asserted before a court of justice, between parties adverse to each other, it constitutes in the strictest sense, a controversy between the parties. and a case arising under the Constitution of the United States, within the express delegation of Judicial power given by that instrument. Congress, then, may call that power into activity for the very purpose of giving effect to that right; and if so, then it may prescribe the mode and extent in which it shall be applied, and how, and under what circumstances, the proceedings shall afford a complete protection and guaranty to the right."

The force and effect of any passage in the opinion of a Court depends, of course, upon the question decided, and upon the course of reasoning employed in coming to the decision. The great questions raised and decided in Prigg's case were, whether as a matter of jurisdiction, the surrender of fugitives from service was imposed by the constitution upon the general government, or upon the state governments; and if upon the general government, whether Congress could legislate to carry the injunction of the constitution into effect. The decision of the Court was, that this duty was imposed exclusively upon the general government; and being imposed there, upon the great principle that where there is a duty imposed, the means of fulfilling it are by necessary implication a part of the grant, that Congress possessed a full authority to provide those means by legislation. In coming to this result, the court laid down the two positions contained in the passage cited at the bar, and which I have just read. They held, first, that a claim for the possession of a fugitive slave was a case arising under the constitution of the United States, and so was within the grant of judicial power which that constitution had conferred upon the general government; secondly, that being such a case, belonging to the judicial power of the Union, and not to that of the states, it was for Congress to regulate and prescribe the remedy, the form of proceedings, and the mode and extent in which the judicial power of the Union should be called into activity.

Now, the learned counsel for the prisoner have insisted most strenuously on the first of these positions, but they have said nothing with regard to the second. I see not why they are not both equally binding upon my judicial conscience. They are both the solemn annunciations by the highest tribunal of the country of doctrines of constitutional law; and if I am to take the one, as I certainly do take it, to be settled law, I am equally bound to regard the other also in the same light.

I admit, then, fully, that a claim for a fugitive slave is a case between parties, arising under the Constitution of the United States, and therefore that it belongs to the judicial power of the United States. I admit also, and maintain, that, inasmuch as this case belongs to the judicial power of the United States, it is for Congress to decide in what mode, to what extent, and under what forms of proceeding that judicial power shall be called into exercise, in order to give effect to the right of the owner claiming a fugitive slave. If so, the only question is, whether this particular form of procedure, authorized by this Act, is or is not such a form of exercising the judicial power, as it is competent to the general government to employ.

I take it to have been as true at the time when the constitution was formed, as it has been since, and had been for a very long time previous, that in all governments formed upon the English model and possessing the English constitutional division of the executive, legislative and judicial departments, there is, in the administration of the laws and the discharge of the functions of government, a certain class of inquiries, judicial in their nature, but which are confided to officers not constituting a part of the judiciary, strictly so called. Thus in England, a Master in Chancery performs duties which are certainly in their nature judicial, and which are conferred upon him by statute or the immemorial usage of the court of which he is an officer. His decisions, involving adjudications upon matters of law and fact, in contestation between parties, are for some purposes and for the ascertaining of some present rights, final. Yet a Master in Chancery is not, and never has been, from the most ancient periods of which there is any trace of his office, regarded as one of the judges of England. In the Year Book, 27, Hen. VIII, fol. 15, it is said that in the Court of Chancery there is but *one Judge*, viz., the Chancellor; and I presume it was never supposed that the acts of 13 Wm. III. c. 2 1 Geo. III, c. 23, the great statutes which regulated the commissions of the Judges and their tenure of office, had any application to the Masters of the Court of Chancery.

In like manner, a sheriff in England has a judicial capacity, and performs several judicial functions. "In his judicial capacity," says Blackstone,

"he is to hear, and determine all causes of forty shillings value and under, in his county court, and he has also a *judicial power* in divers other civil cases." (4 Blackstone Com. 343). Yet the sheriff, instead of being appointed *quamdiu se bene gesserit*, and with a stated salary, is appointed for a year and receives no salary.

It is unnecessary to multiply these illustrations from English usage, to show that there is a class of inquiries of a judicial nature, constituting in one sense the exercise of judicial power, and generally directed for a special purpose, which are confided to officers who are not judges. This usage is, in truth, much older than the very origin of English law, and was derived apparently from the Roman Jurisprudence. There was a class of officers, under the Roman Law, called the *Pedanei Judices*, the assistants of the Prætor, to whom he was in the habit of delegating some of his judicial duties, for special purposes, and who were allowed to receive gratuities from the parties for their services. (Dig. ii. 1, 16. Just. Novel. lxxxiii. c. 9.) There is little doubt that the office of Master was borrowed from this source.

When we come to the practice of governments, constituted as ours are under written constitutions, carefully separating the judicial from the other powers of government, and strictly defining the tenure of the judicial office, if we find the same usage to prevail, and that it is extensively practised, it certainly shows that there exists in our system also a class of inquiries, judicial in their nature, and special in their purpose, which may be confided to the determination of officers who are not judges. The Constitution of this Commonwealth declares that "all judicial officers" shall hold their offices during good behavior, and shall be appointed by the Governor, by and with the advice and consent of the Council. The Bill of Rights, moreover, with great stringency declares that neither the legislative, executive or judicial departments shall ever exercise the powers of either of the others, "to the end it may be a government of laws and not of men." Yet the Legislature of this Commonwealth have authorized a sheriff to preside at trials by juries, summoned to assess damages, for laying out highways; have made it his duty to "decide all questions of law arising on the trial, which would be proper for the decision of a judge; and to direct the jury upon any questions of law when requested by any party; and to certify to the court, with the verdict, the substance of any decision or direction by him given, when any party shall request it." (Rev. Stat. c. 24, sec. 23—25.) Of course, if neither party does request the sheriff to certify his rulings, they are final and conclusive; and this constitutes, in the most ample sense, the exercise of judicial power by an officer whom no one can suppose is a judge. In like manner the Legislature of this Commonwealth have authorized the courts to appoint auditors, to hear matters of account. An auditor exercises judicial power, adjudicates and settles matters of law and fact, and determines a present right; for although his decision is not final, yet it changes the burthen of proof from the plaintiff to the defendant, if the adjudication is in favor of the former. Yet an auditor certainly is not a judge, or a "judicial officer," within the meaning of the Constitution.

So also, the extensive and important duties imposed by statute upon Commissioners of Insolvency constitute the exercise of judicial power. But can any one suppose that it is not competent to the Legislature to regulate the appointment and tenure of office of these officers, according to their pleasure, because the Constitution fixes the appointment and tenure of office of "all judicial officers?" What is the Court of County Commissioners, but a tribunal exercising judicial power? Yet the appointment of County Commissioners is sometimes vested in the executive and sometimes in the people, according to the prevailing fancy of the Legislature.

It is not necessary to go further, with the practice of this Commonwealth. It shows that here, as elsewhere, it is well understood that there are certain judicial functions, having special objects, which are and must be exercised by inferior officers, not appointed, qualified, or commissioned as the Constitution of the State requires Judges to be appointed, qualified and commissioned. This usage prevails under the government of the United States. Under that government, for instance, there is an officer called Commissioner of Patents. He exercises judicial power; for the question whether one of two rival inventors is entitled to a patent, is a case arising under the Constitution and laws of the United States, and its decision involves adjudication of matters of law and fact, between contending parties. Moreover, the decision of the Commissioner is final, as to a present right; for although the validity of the patent may be contested elsewhere, yet the granting of the patent to one party and not to the other, clothes the party who receives it with the very right for which both were contending — the right to be deemed, as against all the world, *prima facie*, the first inventor of the thing patented. Now, no one has ever thought of complaining of the creation of this office, as an improper mode of exercising the judicial power of the United States.

There are other officers in the United States, whose duties touch more nearly the ordinary administration of justice in the Courts of the United States, in which capacity I now sit here. By an Act of Congress passed Feb. 20, 1812, the Circuit Courts of the United States were empowered to appoint Commissioners to take bail and affidavits in civil causes. By a subsequent Act, passed March 1, 1817, the powers of these Commissioners were extended, to enable them to take depositions to be used in the Courts of the United Sates. By a still more recent Act, passed Aug. 23, 1842, their powers were further extended, to enable them to arrest and imprison for trial persons committing offences against the laws of the United States. Nearly nine years therefore have elapsed, since these officers have been called upon to exercise judicial power, in arresting, examining and imprisoning offenders against the laws of the United States. Hundreds and thousands of seamen, and other persons, have by these Commissioners, been so arrested, examined, and imprisoned, and we have never heard it intimated that they ought first to have been appointed by the President, and commissioned for life. Yet the power which they exercise is a part of the judicial power of the United States. The result of the examination is final and conclusive, for a special purpose, to wit, the imprisonment of the party until trial. It settles a present right, namely, that the party is to be deprived of his liberty until a fixed time shall arrive, when a Grand Jury will determine whether to find a bill of indictment against him or not. This is clearly the exercise of judicial power, of a limited and special nature, conferred by Congress upon officers who are not Judges.

The truth is, then, as it would seem, that in every government of laws, administered by a judiciary, there must be a class of judicial inquiries embraced within the general compass of the judicial power, but from their special, limited and ministerial nature, capable, without violating any constitutional rule, of being withdrawn from the action of the Courts, and intrusted to officers specially authorized to conduct them. It may be difficult to define the boundary, on one side of which all these cases would range themselves. It might be wholly inexpedient to define it, in a written Constitution. That it exists, no jurist can entertain any doubt; and it seems to me the only question in this case is, whether Congress, in authorizing these summary

proceedings before a Commissioner, for the surrender of a fugitive from service, have passed that boundary or not.

I am clearly of opinion that they have not; and this brings me to the consideration of the nature, character, and effect of this proceeding, in regard to which I differ entirely from the learned counsel for the prisoner. He maintains that this is a trial of the right of Thomas Sims to his liberty, and that it is a final trial; that it is ministerial or auxiliary to nothing whatever; but that if the certificate is granted, Thomas Sims is consigned to perpetual slavery. Many of the arguments employed by the learned counsel to sustain his position consist of conjectures or suggestions, as to what the claimant is physically able to do, after he gets the prisoner into his possession. If the learned counsel expects that in settling a question of constitutional law, and in determining on the character and effect of this proceeding, I am to look out of the statute, away from what it authorizes the claimant to do, and to indulge my imagination as to what he may do aside from it, I am afraid that I cannot satisfy the expectation. It has, however, been argued that the claimant *may* tear up the certificate the moment he receives it; that he *may* carry the prisoner to any other State, or to Cuba, or Brazil, and sell him; or that if he ever takes him to Georgia, he may hurry him into the interior, upon a plantation, and break down his spirit, and refuse him all opportunity to obtain a trial of the question of his freedom; these things which it is said the claimant *may* do, are gravely put to me as considerations, upon which I am to determine what it is that *the government of the United States* undertakes to do, when it surrenders this man for removal to the State of Georgia. I am of opinion that *this* question is to be determined by the provisions of the Constitution and the act in question.

In the first place, then, I hold that the rendition of fugitives from service, under the Constitution, is an act analogous to the rendition of fugitives from justice, and that the two cases, so far as the powers and duties of the general government are concerned, are of the same general character, and may appropriately be provided for by the same general means. It has indeed been declared at the bar that the two cases are as wide from each other as possible, and that they were made so by the Constitution. There is, however, respectable—I may say more than respectable—authority for the position, that they are not only analogous, but that the Constitution contemplated similar proceedings in both. Mr. Justice Story, in his Commentaries on the Constitution, speaking of both of these provisions, holds the following language:—

"It is obvious that these provisions for the arrest and removal of fugitives of both classes contemplate summary ministerial proceedings, and not the ordinary course of judicial investigations, to ascertain whether the complaint be well founded, or the claim of ownership be established beyond all legal controversy. In cases of suspected crimes, the guilt or innocence of the party is to be made out at his trial; and not upon the preliminary inquiry, whether he shall be delivered up. All that would seem in such cases to be necessary, is, that there should be *prima facie* evidence before the executive authority to satisfy its judgment, that there is probable cause to believe the party guilty, such as upon an ordinary warrant would justify his commitment for trial. And in the cases of fugitive slaves, there would seem to be the same necessity of requiring only *prima facie* proofs of ownership, without putting the party to a formal assertion of his rights by a suit at the common law. Congress appear to have acted upon this opinion; and accordingly, in the statute upon this subject, have authorized summary proceedings before a magistrate, upon which he may grant a warrant for removal."—(3 *Story's Com. on the Constitution, Sec.* 1806.)

The Commentaries were written and published nearly ten years before the case of Prigg *vs.* Pennsylvania occurred. When the learned judge came to deliver the opinion of the court in that case, he said—"There are two clauses in the constitution on the subject of fugitives, which stand in juxtaposition with each other, and have been thought mutually to illustrate each other." (16 Peters, 611.) Let me ask, by whom have they been so supposed? Manifestly by the Congress who enacted the law of 1793, which provided for carrying both these clauses into effect in the same statute, and by similar proceedings, with the single difference that in the one case the appropriate proof was to be presented to the executive of a state, who is to deliver the fugitive to the agent of the state demanding him, and in the other the appropriate proof is to be presented to a judge of the circuit or district court of the United States, or any magistrate of a county, city or town corporate, who is to grant a certificate to the claimant, authorizing him to remove the fugitive to the state or territory from whence he fled. (Act of Feb. 12, 1793.) It is obvious, therefore, that so far as the legislation of the country, practised under for nearly sixty years, can have any tendency to establish an analogy between these cases, this legislation warrants the position that they are analogous. In addition to this, the declaration of the Supreme Court of the United States, in Prigg's case, carefully and industriously made, that they regarded the act of 1793, relative to fugitive slaves, "as clearly constitutional in all its leading provisions, and with the exception of that part which confers authority on *state* magistrates, as free from reasonable doubt or difficulty," to my mind clearly authorizes the inference, that it is as lawful for Congress to authorize summary ministerial proceedings in the case of one class of fugitives, as it is in the case of the other, for it is quite plain that they *had* authorized such proceedings in both.

In addition to the authorities already cited to this point, I may also rely on that of the Supreme Court of Pennsylvania, who, in the year 1819, said of the law of 1793, that, "It plainly appears, from the whole scope and tenor of the Constitution and Act of Congress, that the fugitive was to be delivered up, on a summary proceeding, without the delay of a formal trial in a court of common law. But if he had really a right to freedom, that right *was not impaired by this proceeding;* he was placed just in the situation in which he stood before he fled, and might prosecute his right in the state to which he belonged. Wright *vs.* Deacon, 5 Serg. and Rawle, 64.

It would seem, therefore, that it only remains to inquire whether the act of 1850 authorizes or requires anything more than a summary ministerial proceeding, in aid of the right secured by the Constitution—namely, the right of removal. In order to determine this, it is necessary to look at the proceedings which have been authorized. The statute, like the act of 1793, requires the claimant to present to the Commissioner proof that the person whom he demands owes him service in another state; and when the Commissioner is satisfied of this, he is to grant a certificate, which will authorize the removal. Now it seems to me to have very little tendency to show that this is a full and final trial on the question of servitude, to say that the proof required to be offered is, that the party is held to service. The force and effect of the evidence required by the statute *must* be limited to the object for which it is required; and if that object be, as it clearly is, to establish the right of removal only, it cannot be extended to another and ulterior object, namely, the right to continue

to hold the party after he has been removed. In the case of a fugitive from justice, it must be proved that he has committed a crime. But proved for what purpose? Clearly, to establish the right of removal. This having been established, the warrant that authorizes his removal has no effect to authorize his imprisonment or punishment in the state to which he is removed; but the right of that state so to hold and punish him, must be established, just as if he had never left its jurisdiction.

I am equally unable also to feel the force of the objection, that in the case of a fugitive from service, he is surrendered to his owner, whereas a fugitive from justice is surrendered to a state; for the fact seems to me to have no tendency to show that the proceedings here are, in either case, a trial of anything more than the right of removal. In both cases, the Government of the United States surrenders the fugitive or provides for his surrender, to the party to whom it has stipulated that he shall be delivered up. That party, in the one case, is the owner, who claims a right to hold the fugitive after he has received him. In the other, it is the state which claims to hold and punish the fugitive after it has received him. In both cases the government of the United States does nothing more than to surrender him or to provide for and cause his surrender. It is not true that in the case of a fugitive from justice, security is taken that the party will be tried. The Act of 1793 does not *require* that he should even have been indicted. He may be demanded, although he is only charged with a crime on an affidavit sworn before a magistrate in the state from which he has come. Neither does the statute of this Commonwealth make any provision by which the executive of this state, when it surrenders a fugitive from justice, is to stipulate that he shall be tried. [Rev. Stat. c. 142, § 7, 8, 9.]

Neither does the government of the United States, when it surrenders a fugitive from justice to a foreign country, hold over him its protection, until he has been tried. Such a fugitive is not surrendered under the law of nations, but under a Treaty stipulation; and in the case of the Treaty with England, he is to be delivered up to justice, but that justice is to be regulated, administered, and dealt out to him, not according to the demands or the ideas or forms of proceeding of this government, but according to the absolute discretion of the government that receives him. In all these cases, the government making the surrender, undoubtedly makes it, in the general faith and confidence, which the comity of nations requires independent governments to place in each other, that the power demanding a fugitive will deal with him justly. But it does not ordinarily make stipulations to secure a trial, or a particular mode of administering justice, and unless such stipulations are made, it can exercise no control over the matter.

In the case of fugitives from service, there may be practical difficulties or improbabilities as to a trial after the fugitive is returned. But the question here is, whether the government of the United States, in making the surrender which it has stipulated to make, is constitutionally bound to stipulate for a trial; and whether, because it has not made such a stipulation, its omission to do so makes these proceedings final and conclusive, instead of ministerial. I think neither of these positions is true. I know of nothing to prevent the general government from surrendering a fugitive slave if it sees fit, trusting to the government of the state to provide him with the means of testing his alleged owner's right to hold him, after he has received him. It is suggested that there are practical difficulties and improbabilities. On the other hand it may be suggested that there are practical means and provisions, well known to be made by the slave states for trying these questions of freedom by process instituted for the express purpose; and the government of the United States, for aught that I can see, has just as clear a constitutional right to look to one class of probabilities as to the other. Its looking to the one and not to the other, does not make its own proceedings, clearly designed to be ministerial and to secure only the limited right of removal, a full and final trial of a right which it obviously intends to leave to another government to adjudicate, upon the faith that it will do justice to its own subject.

Entertaining, therefore, a very clear opinion that these proceedings are ministerial, and that it is perfectly competent to Congress to authorize a magistrate, appointed by the authority of Congress, who is not a Judge, to make this judicial inquiry for this special and limited purpose,—I come now to examine the authorities which have been cited at the bar, in order to ascertain how far that competency is a settled question. The learned counsel for the prisoner has said, perhaps with entire correctness, that the question of the constitutional right of Congress to confer this authority upon an inferior magistrate, has never been directly raised, argued, and decided in any court in this country, with the exception of a very recent case in the Supreme Court of this state. He admits, however, that the case of Prigg, *vs.* the Commonwealth of Pennsylvania, (16 Peters) does contain *language* that authorizes this jurisdiction, although he denies that such an effect ought to be given to the case. But it seems to me, that I am bound to give effect to the solemn declaration of opinion found in that case, for I find it declared, that that court entertained no doubt that *state magistrates* may, if they choose, exercise this authority, unless they are prohibited by state legislation.

The case of Wright *vs.* Hall, 5 Serg. and Rawle, 62, is an authority directly in point. The Supreme Court of Pennsylvania in that case decided that a writ *de homine replegiando* would not lie, to interrupt a certificate granted by a state magistrate, for the removal of a fugitive slave. The certificate was granted by a judge of the Court of Common Pleas, who undertook to act under the law of 1793. In the case of Jack *vs.* Martin, 12 Wendell, 311, the recorder of the city of New York had granted a certificate, and the Supreme Court of the state decided that a writ *de homine replegiando* could not prevent his removal. In the case of Commonwealth *vs.* Griffith, 2 Pickering, 11, no warrant had been used, and no magistrate had undertaken to act, but the alleged fugitive had been seized by the agent of the owner without process. In like manner, in the case of Glen *vs.* Hodges, 9 Johnson, 67, the slave had been seized without process, and consequently this question was in no way involved in the decision. These are all the authorities cited at the bar, with the exception of a case which I am informed occurred in the Supreme Court of this Commonwealth on Monday last, in reference to this proceeding. It is stated by the counsel on both sides that an application was made to that court for a writ of habeas corpus, to bring up the body of Thomas Sims, upon the ground that his arrest and restraint under my warrant is unlawful, for the reason that I had no authority to issue it. I understand that the same question was argued, which has been argued before me, and that the court unanimously sustained my authority to issue the warrant, and refused the writ. I have not seen any report of the decision, but I presume that this question is now entitled to be considered as settled, by other authority than my own.

II. The second objection taken by the learned counsel for the prisoner is, that this proceeding is a suit at common law, in which either party has a right to demand a trial by jury; and inasmuch as

the act of Congress has withheld a trial by jury, it is unconstitutional and void, as against the 6th Art. of the Amendments to the Constitution, which declares, that "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

I have endeavored in the foregoing discussion, to show, on the authority of the Supreme Court of the United States, on that of the Supreme Court of Pennsylvania, on that of Mr. Justice Story as a Commentator on the Constitution, and by some views of my own, that this is a summary ministerial proceeding, in aid of a right of removal, and that the liberty of the party is not in contestation here, for final adjudication. If this be so, and I can entertain no doubt that it is, this proceeding is not a suit at common law, in which either party can as a matter of right, demand a trial by jury. If it were a proceeding in which the rights of the parties were to be tried for final adjudication, then I should agree, that the prisoner could, as a matter of right, demand a trial by jury, if it were true that slaves are entitled to the benefits of the Constitution of the United States. But as I hold it to be a proceeding of an entirely different character, which, although it involves an inquiry judicial in its nature, is merely provided in aid of a right of removal which the claimant would have without it, under the Constitution, I am of opinion that a trial by jury cannot be demanded, and consequently that this objection to the Act is untenable. The decision of the Supreme Court of the United States, in Prigg's case, that the law of 1793, which also withheld a trial by jury, is constitutional in all its leading provisions, it seems to me fully disposes of this question.

III. The next objection taken by the learned counsel for the prisoner is, that the Transcript of a Record, authorized by the statute to be made in the state where the claimant resides, is incompetent evidence, Congress having no power to confer on State Courts authority to take such testimony.

The argument in support of this objection is, that the exercise of an authority to take testimony to be used in this proceeding, or to find a fact involved in the decision to be made, is the exercise of judicial power, which Congress cannot constitutionally confer upon a State Court or Magistrate. In order to make the answer to this objection, which satisfies me that it is wholly unfounded, intelligible, it is necessary to recur to the provisions of the Statute. The 10th Section of the Statute contains the following provisions:—

"That when any person held to service or labor in any State or Territory, or in the District of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, his, her, or their agent or attorney, may apply to any Court of Record therein, or Judge thereof in vacation, and make satisfactory proof to such Court, or Judge in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party; whereupon the Court shall cause a record to be made of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record, authenticated by the attestation of the clerk and of the seal of the said Court, being produced in any other State, Territory or District in which the person so escaping may be found, and being exhibited to any Judge, Commissioner, or other officer authorized by the United States to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned."

By virtue of this provision, one branch of the inquiry directed by the statute to be made, before a certificate is granted for removal, is directed to be made by a Court or Judge of the State from which the fugitive has escaped. This part of the inquiry is, whether any body, owing service, has escaped. The other branch of the inquiry, namely, whether the prisoner arrested here, is the person who so escaped, is directed to be made here, by the Commissioner. I shall have something to say concerning the obvious reasons for this provision, in another part of this opinion. At present, it is only necessary to say, that the objection is answered, by the view which I take of the nature and character of this proceeding, and by the decision of the Supreme Court of the United States in the case of Prigg; for if it is true, as the Court there declared, that State magistrates may, if they choose, exercise the whole of this jurisdiction, find every fact involved in the inquiry, and grant a certificate upon such finding, it is surely competent to Congress to confer upon a State magistrate authority to exercise a part of this jurisdiction and to make a part of this inquiry. That the finding of a State magistrate upon that part of the inquiry which he is authorized to make, is made conclusive upon the Commissioner here who is to find the other fact, and to do something thereon, is in strict analogy to a class of cases, where officers, who are not part of the judiciary, are directed to make certain inquiries, and to find certain facts, which are to have certain legal consequences, when presented to a tribunal authorized and directed to act thereon. I will cite a single but very important instance of this class of cases.

A statute of this Commonwealth, passed in 1838, directed Bank Commissioners, to be appointed by the Governor, to examine the banks, and if they should be of opinion that any bank was insolvent, or in a condition that made its further progress hazardous to the public, or that it had exceeded its powers, they were to apply to a Justice of the Supreme Judicial Court, who should forthwith issue an injunction, to restrain the bank from further proceeding with its business, until a hearing could be had. In the case of *The Commonwealth*, vs. *The Farmers' and Mechanics' Bank*, (21 PICK. 542) the objection was taken that this law was unconstitutional, because it was an usurpation of judicial power, to confer on the Bank Commissioners authority to find a fact, and then to require the Judge, on that finding, and without evidence to satisfy his own mind, to issue the injunction. The Supreme Court overruled the objection, and held that it was competent to the Legislature to confer authority upon the Bank Commissioners to find and represent to the Court a state of facts, on which the Court were to found a present and immediate action. This is entirely analogous in principle, to what Congress have done in the present instance. They have authorized certain persons in another State to find a certain fact, on which the Commissioner here is to act, when it is properly certified to him.

IV. The next objection taken by the learned counsel for the prisoner to the constitutionality of this Act of Congress, is, that the prisoner was not present at the taking of the evidence before the State Judge, and had no opportunity to cross-examine the witnesses, and therefore the evidence is incompetent.

If the prisoner is the identical person mentioned and described in this transcript of a record as having escaped from Georgia, while owing service, and it has been proved to me, by evidence wholly independent of the record, that he is, his absence from the State where the evidence is directed by law to be taken; so that he could not be served with notice, if he was entitled to it, was in his own wrong, and he cannot now complain that he had no opportunity to cross-examine the witnesses.

V. The last objection of the learned counsel is, that Congress have no power to legislate on the subject of the surrender of fugitive slaves at all,

but that it is a power and duty which belongs exclusively to the States.

I might rest here, wholly upon the authority of that high tribunal which is supposed to settle the construction of the Constitution of the United States. But as all these questions have been pressed upon me, in a manner to challenge my separate and independent judgment, I shall briefly state my view of a question which has long been part of the settled law of this country.

It is not necessary to look into the historical grounds on which this clause of the Constitution is believed to rest, in order to see in it a purpose which can be effectually accomplished only by the national government. The very words of the clause seem to me manifestly to disclose such a purpose. They declare that these persons shall not be discharged from their service or labor in the state to which they may have fled, "in consequence of any law or regulation therein." It would seem, therefore, to be beyond controversy, that the object of this provision was to prevent State legislation from interfering with or impairing the right of the master to the service or labor of his slave. It intended to declare, and it does declare, that whatever may be the law of Massachusetts, on the subject of personal liberty, that law shall not be applicable to a person who owes service or labor in the State of Georgia, simply because he has escaped within the limits of this Commonwealth; but that the master or owner to whom such service or labor is due, shall retain unimpaired the right to that service or labor, which the law of his own State has given him.

Here, then, is a great leading purpose, which the Constitution meant to secure and accomplish, and which must be accomplished by means. The clause is not silent as to the means. It does not stop with the simple annunciation of the principle that the law of a free State shall not apply to a fugitive from service due in another State. It declares that such a fugitive "shall be delivered up on claim of the party to whom such service or labor is due." Now, undoubtedly, the question arises upon this injunction, By whom is he to be delivered up? But is it not quite obvious, that a construction which confines the duty of making such delivery to the State governments, may defeat the whole purpose which the previous part of the clause manifestly discloses? That purpose is to prevent any State legislation whatever, from discharging the obligation to render service. But to say that the State, whose legislation, or whose common law, if left to operate upon these cases, must discharge that obligation, is the authority and the sole authority, entrusted with the power and duty of preventing this consequence, is to put it in the power of the State to do that which the Constitution says shall not be done.

It is, to my mind, no answer to this difficulty, to say that the Constitution prohibits the States from doing certain other things, and at the same time leaves them physically free to do them if they see fit, or in other words, leaves them to exercise their own volition whether to do them or to refrain from them. The Constitution declares that no State shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; but every State is physically able to disregard this prohibition, and its legislation will operate upon individuals until the judicial power interposes. There is no active and instantaneous means of enforcing the prohibition provided by the Constitution for the simple reason that the nature of the case does not require any, but the remedy may well be left to the slow but certain operation of the judicial power.

But in the case of the prohibition in question, which forbids the law of a state from operating to discharge an obligation of service due in another state, there is superadded to the declaration of this principle the means of giving it an immediate and certain operation, by the "delivery" of the person owing that service to the person to whom it is due. I cannot bring my mind to the conclusion that it was intended by the Constitution to leave the sole application of these means, thus industriously added to the prohibition, to the very authority against whom the prohibition itself is directed. On the contrary, it seems to me that when the Constitution prohibited the laws and regulations of the states from operating to discharge the obligation of service, and in order to prevent this operation, provided that the party should be "delivered up," it meant to cast, at least, the concurrent duty of causing that delivery, upon the power which can alone effectually accomplish it—the general government. To this I have only to add, that the question of the power of Congress to legislate on the subject of the surrender of fugitive slaves, is conclusively settled by the Supreme Court of the United States, in the case of Prigg, and upon their authority it may be safely left to rest.

One other objection, of a technical character, remains to be noticed, and that is, that the power of attorney, under which the agent of the claimant undertakes to act, is not properly authenticated. This power of attorney is acknowledged before and certified by a Notary Public of the city of Savannah. The statute requires the power of attorney to be "acknowledged and certified under the seal of some legal officer or court of the state or territory in which the same may be executed." (§ 6.) The objection is, that a Notary Public is not a legal officer, within the meaning of the statute. I am of opinion that he is. A Notary Public, by the nature of his office, and according to the law and usage of all civilized states, is a general certifying officer to the written acts of individuals, intended to be used in another country than that where they are executed. His authority, for *this* purpose, does not depend upon the local law, but upon the nature of his office, as understood and admitted every where, and in this respect he differs essentially from many other magistrates. In the case of Lord Kinnaird *vs.* Lord Saltoun, 1 Maddox's Ch. R., it was held, that if a deed is formally executed in a foreign country, and the execution is authenticated by a Notary Public, this is sufficient proof to entitle it to be read; but if authentication was before the Mayor of a foreign town, it is not received without proof of his office.

I now come to the evidence which has been offered here, to establish the right of the claimant to remove from this district Thomas Sims, the prisoner at the bar. Two propositions are to be established affirmatively by the claimant in every case under this act. 1. That some person, owing service or labor to the claimant, escaped from the state where such service or labor was due. 2. That the prisoner under arrest is the person who so escaped.

The statute prescribes a particular mode in which the first of these propositions may be proved, although it does not confine the claimant to that particular form of proof. If, however, the claimant sees fit to make use of this mode of proving the fact of an escape by a person owing service, the evidence, when put into the form required by the statute, is conclusive of that fact, but of nothing beyond it. The second proposition, involving the identity of the prisoner with the person described to have escaped, remains to be proved by independent and satisfactory evidence, and is open to contestation, as long as a doubt can exist about it.

The provision of the statute, which prescribes the mode in which a claimant may make this conclusive proof of the fact of an escape by a person owing service to him, has already been read.

It is not at all difficult to see the reason for the introduction of this provision into a new law,

designed to furnish a more effectual remedy than the old one, for the reception of fugitives from service. Congress evidently considered that from the great extent of the Union, there must be vast multitudes of cases, in which the owners of the fugitives could not personally leave home, or send in person the witnesses who might be able to prove the fact that some one had escaped who owed service. It was therefore necessary to make some provision by which this fact could be proved, without transporting witnesses from one end of the Union to the other—for this fact lies at the foundation, in every case, of the right to arrest and remove an alleged fugitive.

This provision was made in the section above cited; — and to my mind there is great security to liberty in its requisitions. In the first place, it is no inconsiderable safeguard to have a judicial inquiry into the fact, before the claimant sets forth in pursuit, that some one who owed him service has escaped. It has a manifest tendency to increase the difficulties of setting up fictitious and unfounded claims. It furnishes to the tribunal in a free state —called upon to make an arrest, the satisfactory assurance that a respectable tribunal of the vicinage has verified the fact that there was a certain slave, and that that slave has escaped. Any one who has been called upon in a free state to issue process to arrest one of these fugitives, must have felt the force and value of such a verification.

In the next place, the statute, by requiring the claimant to make a description of the person who he says has escaped, and by requiring that description to be made matter of record, has furnished, to the tribunals in a free state, making an arrest an additional safeguard against imposition or mistake. A written description, made with all the convenient certainty that the case admits of, and made too at a time and place when and where the claimant cannot nicely adapt it to the exigencies of the arrest which he intends to make, is placed before the Court or Commissioner here, as the very groundwork of the case. In the third place, the statute, by making the record conclusive of the fact of escape, and that the service of the *party escaping* was due to the claimant, makes the recorded description also conclusive. The claimant cannot alter it, or amend it, by making one hair white or black. He comes with a record in his hand, and to that record he is bound, as soon as he presents it to the Commissioner. He must bring the person arrested within that description, to the satisfaction of the mind of the Commissioner, by competent and independent proof, by the opportunities of inspection, examination and comparison, or he fails to make out his case.

On the other hand, the making the record conclusive, as to the description of the party who has escaped, can work no prejudice to the party arrested, for if he is not the party intended to be described; it is of no consequence to him whether the description be strictly accurate or not; and if he is the party intended to be described, any misdescription must only increase the chances of his escape. Whatever others may say or think, therefore, of this provision of the statute, I feel quite confident that there is no right-minded man in this country, who has been, or is likely to be called upon to discharge judicial duties under it, who has not felt, or will not be likely to feel inexpressible satisfaction and relief, that the law has been made in this particular what it is.

Let me suppose, for a moment, that the Statute had provided no such record, or that, being provided, it were not resorted to, but witnesses are sent here to establish both the propositions which are involved in the issue. In the first place, the warrant must be granted; without any certainty that the first proposition, viz., that there was a certain slave, and that he has escaped, can be established. In the next place, the witnesses who are to establish this proposition are also to swear to the identity of the person arrested, and they testify to both propositions after the arrest has been made. It is manifest, that under this form of proceeding, the opportunities for perjury and misrepresentation, in all their infinite variety of shades, are vastly increased.

There is no check upon the witnesses, on the question of identity, because there is no standard to which that question can be brought. The witnesses may adapt their description of the party whom they say they knew as a slave, to the appearance of the party under arrest; they may do this wilfully or unconsciously; but whether it is done from corrupt design, or from the mere effect of eagerness and zeal, it is very easy to see, that on a nice or critical question of identity, the dangers that would arise from the blending of both the propositions into one, might be appalling. But the statute has provided a form of proceeding which keeps these propositions clearly and logically distinct, and makes the one, in some degree, a check upon the other; and as this is the most convenient form of proceeding for the claimant, there is every reason to expect, as there certainly is to hope, that it will generally, if not universally, be resorted to.

In the case before me, the agent of the claimant has presented to me the transcript of a record, duly authenticated, made by and before the Hon. Henry R. Jackson, Judge of the Superior Court of the Eastern District of the State of Georgia, from which it appears that on or about the 22d day of February last, one Thomas Sims escaped from the State of Georgia, while owing service or labor to James Potter, the claimant. The record also contains a description of the said Thomas Sims, which it is not necessary to recite. This branch of the inquiry is, therefore, fully made out, namely, that there was a certain person, named Thomas Sims, who owed service to James Potter, in the State of Georgia, and that he escaped from that state on or about the 22d of February last.

It remains only to inquire, whether the claimant has sufficiently established the second proposition, namely, the identity of the prisoner at the bar with the person described in this record as having escaped from Georgia while owing service to James Potter. The evidence upon this point is of three kinds. 1. The evidence of the prisoner's appearance, which corresponds entirely with the description of him furnished by the record. 2. The evidence of witnesses who knew the prisoner in Savannah as the slave of James Potter. 3. Facts sworn to by other witnesses, which tend to corroborate the previous testimony.

The witnesses who swear directly to the prisoner's identity, are two: Edward Barnett and John B. Bacon. Barnett testifies that he has known the prisoner for the last ten months in Savannah, under the name of Thomas Sims; that he worked as a bricklayer on the same scaffolding with him in August and September last; that he once asked the prisoner if he was a slave, and he replied that he was, and that he belonged to James Potter, a rice planter, who lives ten or twelve miles from Savannah, and that he had to pay his wages to Mr. Potter monthly, to the amount of about $10 per month. This witness also states that he knew the prisoner's mother and sister in Savannah.

The other witness, Bacon, is the agent of Mr. Potter, who came here to make the arrest. He testifies that he has known the prisoner as the property of Mr. Potter, for fifteen years, that he last saw him in Savannah on the 22d of February; that during the last ten years the prisoner has generally lived with his mother in Savannah, accounting to Mr. Potter for his wages; that he knows the prisoner did so account for his wages, from being present

both when they were paid to Mr. Potter by the mother and by the prisoner, and from repeatedly seeing his mother go after him for his wages and that there is not a shadow of doubt with reference to his identity. He also testifies that he left the mother in Savannah a week ago last Saturday. He adds a fact which has no legal significance here, but which certainly disarms this case of any unpleasant features, that the last thing which the mother said to him on the eve of his departure, was to beg him, whether her son was in a free State or a slave State, for God's sake to bring him back again.

Both of these witnesses are entirely unimpeached. Both have appeared upon the stand to be respectable, candid and fair witnesses. They were very properly subjected to a searching cross-examination, to ascertain whether they have any contingent interest in the result of this proceeding, and it does not appear that either of them has. No attempt has been made in the argument to assail or shake their testimony, and I hold myself bound to yield to it unhesitating and implicit confidence.

The other evidence, which comes from the master and two of the crew of the brig M. & J. C. Gilmore, proves beyond the possibility of doubt that the prisoner at the bar came from Savannah, secreted on board that vessel, without the knowledge of the master or crew, in February last.

Ball, one of the crew, testifies that he saw the prisoner, in Savannah, five or six days before the brig sailed, alongside; that the steward asked him if they wanted a cook, and he replied no; that the next he saw of the prisoner was after the brig had arrived inside of Boston Light, when he came out of his hiding place.

Eldredge, the Captain, testifies that he saw him first after the vessel arrived in this port, and Ames, one of the crew, testifies to the same thing. Both of these witnesses conversed with him separately, and both asked him the question whether he was a slave. To Ames he gave an account of himself utterly inconsistent with the account which he gave to Barnett, and with the other facts sworn to by Barnett and Bacon.

He told Ames that he was born in Florida—that he was not a slave; that he had a mother and sister in Boston and came on to see them; that his father bought him free when he was six months old; that he had been in Savannah but twelve or thirteen months; that he left his free papers there, and that he came away, because he had been reported to the authorities as a free negro, which made him liable to pay $100 fine. Captain Eldredge says that he asked him who his master was; that at first he said he was not exactly a slave, but that he could get nothing satisfactory out of him, and that he did not give the name of his master. He made no definite reply to the question why he came on board.

This is the whole of the evidence; and I must say it leaves no room whatever for a doubt that the prisoner before me is the identical person described in the record, as having escaped from Georgia, while owing service to James Potter. If there is any truth whatever in the story which he told to Ames on board the vessel, one part of it may reasonably be expected to be as true as another.

One part of it is that he was born in Florida and was made free when six months old. Another part of it is, that his mother and sister are in Boston, and that he came on to see them. Where are they? Why are they not produced? In this matter of such great importance, are there none among the colored women of this city who can be brought forward to confirm him? None. It is not to be imagined that this mother and sister are not produced here for any other reason than because they are not, and never were, anywhere but where the witnesses left them—in the city of Savannah, awaiting this young man's return.

Having thus stated the conclusions to which I have come upon all questions raised in this case, I have only to add that I can entertain no doubt whatever that it is my duty to grant to the claimant the certificate which he demands, and I do accordingly grant it.

I feel it to be a public duty, in closing this decision, to express here my deep obligations to the marshal of the United States and to the marshal of the city of Boston, and the various officers serving under them, for the efficiency and prudence with which they have discharged their respective duties connected with or occasioned by this hearing.

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